

IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'H' : NEW DELHI)
BEFORE SH. N.K.BILLAIYA, ACCOUNTANT MEMBER
AND
SH.ANUBHAV SHARMA, JUDICIAL MEMBER
ITA No. 623/Del/2020, A.Y. 2017-18

DCIT Central Circle-8 New Delhi	Vs.	M/s. Vatika Limited 4 th Floor, Vatika Triangle, M.G.Road, Sushant Lok-I, Block-A, Gurgaon, Haryana-122002 PAN : AABCV5647G
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Assessee by	Sh. C.S.Aggarwal, Sr. Adv., Ravi Pratap Mal, & Sh. Uma Shankar, Adv.
Revenue by	Ms. Sapna Bhatia, CIT-DR

Date of hearing:	20.04.2023
Date of Pronouncement:	3 rd .05.2023

ORDER

Per Anubhav Sharma, JM :

The appeal has been preferred by the Revenue against the order dated 14.11.2019 of CIT(A)-24, New Delhi (hereinafter referred as Ld. First Appellate Authority or in short Ld. 'FAA') in appeal No. 436/18-19 arising out of an appeal before it against the order dated 30.12.2018 passed u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred as 'the Act') by the ACIT, Central Circle--08, New Delhi (hereinafter referred as the Ld. AO).

2. The facts in brief are the assessee company incorporated on 02.07.1980 is engaged in the business of real estate. In the relevant assessment year it

furnished return of income on 30.11.2017 at loss of Rs. 5,73,81,96,994/- along with its annual audited accounts. During the pendency of the assessment a search took place on the company on 17.10.2016. The Ld. AO issued a notice u/s 142(1) of the Income Tax Act on 26.07.2018 directing assessee to furnish return of income for the assessment year. Assessee submitted vide submissions dated 07.08.2018 that its return of income filed earlier on 30.11.2017 be considered. Thereupon notice u/s 143(2) of the Act was issued and the Ld. AO had made an addition of Rs. 34,76,00,000/- on account of undisclosed profits. The same has been deleted by the Ld. CIT(A), therefore, the Revenue is in appeal raising following grounds :-

“1. The Ld. CIT(A) erred in law and on facts in deleting the addition of Rs. 34,76,00,000/- even though the same had been made on the basis of incriminating material discovered during the search at the assessee’s premises.

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

3. Heard and perused the record.

4. Ld. DR supported the findings of Ld. AO and submitted that Ld. AO had rightly taken into consideration the statements and incriminating material. It was submitted that addition is on account of undisclosed profits and retrun of higher revenue is of no consequence.

5. On behalf of the assessee it was submitted that the addition has been made on the basis of a document found at the time of search which only reflected projected income for A.Y. 2017-18. It was submitted that the projected revenue mentioned in this paper is Rs.55587.30/- loss while actual revenue earned and reflected in profit and loss account is more at Rs. 66769.34/- lakhs. It was submitted that in these circumstances, the documents cannot be said to be incriminating document as what has been shown as projected income found its

place on enhanced basis in the books and reported in the return. It is submitted that Ld. CIT(A) has duly appreciated the facts of the case that projected income has been made basis for addition while the assessee has reported higher income of the finalization of accounts. It was submitted that the accounts on the basis of which return of income has been filed having accepted, then no additions on the basis of projected income can be made.

6. Appreciating the matter on record it comes up that Ld. CIT(A) has taken into consideration the fact that Sh. Gautam Bhalla , Managing Director of the assessee company had mentioned that the projected income was based on percentage completion method and what comes up is that based upon the accounting practices, the books of accounts of the assessee were prepared and audited which have become the basis of final the return of income. The Ld. AO had not doubted the books of accounts and Ld. CIT(A) has taken the same into due consideration to conclude that when the books of accounts are not doubted than a document reflecting any projection for the year under consideration and as it does not evidence the real actual transaction same cannot be considered to be an incriminating evidences.

7. Ld. CIT(A) has duly considered the fact that merely on the basis of statement of Sh. Gautam Bhalla recorded u/s 132(4) of the Act, the addition could not have been made when otherwise the projection / estimation of the income has culminated into reporting actual income.

8. The Bench is of considered opinion that Ld. AO has fallen in error in relying the statement of the Managing Director which is not corroborated by any other material to show that the paper having projections was over and above the reported revenue. Ld. AO observed that the assessee company has earned more revenue from operation than shown in the profitability statement i.e. seized document, but took into consideration the profit of Rs. 5,21,86,000/- to

conclude that the assessee has escaped from paying any tax on the surrendered income without analyzing the reasons for lower reported profits than the projected one. What Id. AO erred was to consider the surrendered projected income to be undisclosed income while in audited financials the surrendered projected income had found its place. Ld. CIT(A) has made no error in considering that during the search or otherwise it was not established that the assessee is not disclosing true income or claiming not genuine expenditure. In that case based upon the profitability projections, the addition is not justified.

9. Thus, the bench is inclined to not interfere in the findings of Ld. CIT(A). Grounds raised have no substance. **Consequently, the appeal of Revenue is Dismissed.**

Order pronounced in the open court on 3rd May, 2023.

Sd/-

(N.K.BILLAIYA)

ACCOUNTANT MEMBER

Date:-3 .05.2023

Binita, SR.P.S

Copy forwarded to:

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

Sd/-

(ANUBHAV SHARMA)

JUDICIAL MEMBER

ASSISTANT REGISTRAR
ITAT, NEW DELHI