

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "A" NEW DELHI**

**BEFORE SHRI NARENDRA KUMAR BILLAIYA, ACCOUNTANT MEMBER
AND
SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER**

**आ.अ.सं./I.T.A Nos.6940 & 6941/Del/2018
निर्धारणवर्ष/Assessment Years:2013-14 & 2014-15**

DCIT Circle 3(1) New Delhi.	बनाम Vs.	Arihant Unitech Realty Project Ltd. Basement & Community Centre, Saket, New Delhi.
		PAN No. AAFCA6188H
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

Assessee by	None
Revenue by	Shri Kanv Bali, Sr. DR

सुनवाईकीतारीख/ Date of hearing:	23.05.2023
उद्घोषणाकीतारीख/ Pronouncement on	29.05.2023

आदेश /O R D E R

PER C.N. PRASAD, J.M.

These two appeals are filed by the Revenue against the order of the Ld. Commissioner of Income Tax(Appeals)-1, New Delhi dated 03.08.2018 for the AYs 2013-14 and 2014-15. The Revenue has raised the following common grounds of appeal except for the figures in respect of deletion of the disallowance made towards

marketing fees claimed as expenditure u/s 37(1) of the Act by the assessee. For the AY 2013-14 the Revenue has also raised one more ground in respect of deletion of addition of Rs.2,50,407/- on account of un-reconciled differences. In spite of service of notice on the assessee none appeared on behalf of the assessee nor any adjournment was moved. Therefore, we dispose of these appeals by hearing the Ld. DR.

2. The Ld. DR submits that the AO noticed that assessee has paid marketing fee of Rs.2,10,64,899/- to Arihant Griha Ltd. which is an associate company of the assessee and an amount of Rs.1,77,96,833/- to Redstone Realtor Pvt. Ltd. which is an unrelated party. The assessee company was asked to justify the payment made on account of marketing fee. The assessee furnished a memorandum of understanding entered into between the assessee and Redstone Realtors P. Ltd. and stated that on the basis of the memorandum of understanding the marketing fee has been paid. However, the AO disallowed marketing fee paid to these parties observing that assessee company submitted vague reply, did not submit details and the basis along with evidences for payment of marketing fee and there is no justification for making the payment towards marketing fee.

3. The Ld. DR further submits that assessee had furnished additional evidences before the Ld.CIT(Appeals) and the Ld.CIT(A) called for remand report. The AO submitted the remand report stating that the assessee has been provided ample opportunities to furnish the details in respect of the marketing fee incurred by the assessee and for its justification. The assessee never submitted any evidences before the AO and, therefore, in the remand report the AO submitted that the additional evidences may not be admitted. The Ld. DR submits that the Ld.CIT(A) without addressing as to why the additional evidences could not be furnished by the assessee before the AO and why the additional evidences are admitted he has deleted the disallowance made by the AO. The Ld. DR submits that there is no finding by the Ld.CIT(A) as to why the additional evidences have to be admitted and without giving any finding he has gone into the merits of the additional evidences and deleted the disallowance. Ld. DR placing reliance on the decision of the coordinate bench of Delhi in the case of DCIT vs. E-4, Entertainment (P) Ltd., ITA No.4491/Del/2010 dated 11.05.2012 and ITO vs. Kuber Chand Sharma in ITA No.3982/Del/2009 dated 13.02.2012 submits that the Ld.CIT(A) has failed to give any satisfactory reasons for exercising his powers u/s 46A of the Act. Therefore, the Ld. DR

submits that the issues in appeal may be restored to the file of the AO for *denovo* adjudication after thorough examination by the AO.

4. On hearing the Ld. DR and on going through the orders of the authorities below, we feel it appropriate to restore the issue of disallowance of marketing fee claimed as expenditure u/s 37(1) of the Act by the assessee to the file of the AO for *denovo* adjudication after thorough examination of the additional evidences furnished by the assessee. Accordingly, we restore this issue to the file of the AO for adjudication afresh in accordance with law after providing adequate opportunity of being heard to the assessee.

5. In respect of disallowance towards un-reconciled balances with Pavithra Construction and S.K. Sanitations is concerned we observe that the AO made addition of Rs.2,50,407/- as the assessee could not furnish the reconciliation in respect of the difference as per the assessee's books of account and as furnished by the parties.

The Ld.CIT(A) deleted this addition observing as under:

“Ground No.3 relates to addition on account of un-reconciled differences.

The appellant during the relevant financial year had received certain contractor services from M/s S.K. Sanitations Pvt. Ltd. (“SKSPL”), which raised bills to the tune of Rs.52,60,904/- on the appellant for such services. The AO issued notice u/s 133(6) of the Act to M/s SKSPL seeking confirmation of the balance. It was

submitted that while giving such confirmation u/s 133(6), M/s SKSPL had not included the amount of TDS and WCT amounting to Rs.2,44,417/- and, therefore, the figure reported by it u/s 133(6) was Rs.50,16,487/-. The difference therefore, between the balance in the books of accounts of the appellant, and the confirmation given M/s SKSPL, was on account of such non recording of TDS and WCT amounts. The appellant sought a fresh confirmation from M/s SKSPL clarifying the correct amount (after including the amount of TDS and WCT) and the same was filed and forwarded to the AO for comments. In view of the clarification the addition is deleted.”

6. We observe that the assessee has furnished a fresh confirmation from S.K. Sanitations Pvt. Ltd. based on which the addition was deleted. It is the observation of the Ld.CIT(A) that the fresh confirmation submitted by the assessee from S.K. Sanitations Pvt. Ltd. was also forwarded to the AO for comments. However, the Ld.CIT(A) has not recorded any comments received by the AO. In the circumstances, we feel it appropriate to set aside this issue also to the AO and the AO should examine this issue with reference to the fresh confirmation furnished by the assessee. Thus, this issue is also restored to the file of the AO for fresh adjudication in accordance with law after providing opportunity of being heard to the assessee.

7. In the result, both the appeals are allowed for statistical purpose.

Order pronounced in the open court on 29.05.2023

Sd/-
(NARENDRA KUMAR BILLAIYA)
ACCOUNTANT MEMBER

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER

Dated: 29.05.2023

**Kavita Arora, Sr. P.S.*

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT
(DR)/Guard file of ITAT.

By order

Assistant Registrar, ITAT: Delhi Benches-Delhi