

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH: 'G': NEW DELHI)**

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

**ITA Nos:- 1798 & 1799/Del/2014
(Assessment Year: 2007-08)**

Savvy Homes Pvt. Ltd., C/o Ashok Raj & Associates, 19, Navyug Market Ghaziabad.	Vs.	ITO, Ward-7(4), Delhi.
APPELLANT		RESPONDENT
PAN No: AANFS1515P		

Assessee By : Shri Akhilesh Kumar, Adv. and
Shri Vipin Garg, Adv.
Revenue By : Ms. Kajal Singh, Sr. DR

Date of Hearing : 19.06.2023
Date of Pronouncement : 21.06.2023

ORDER

PER SHAMIM YAHYA, A.M.

These two appeals by the Assessee are directed against the Quantum and Penalty Order of Ld. CIT(A)-X, New Delhi for Assessment Year 2007-08. The Grounds of appeal in ITA No. **1798/Del/2014** are as under:-

- "1. *The Ld. Assessment Officer has wrongly added the amount of Income Rs. 9.88.99.941/ and imposing the Tax of Rs. 4,42,06,606/ So, the addition of*

Rs. 9,88,99,941/- should be withdrawn.

2. *The Ld. Assessment Officer has not provided meaningful opportunity to the assessee.*
3. *The Ld. A.O. has estimated the income from Commission to Rs. 10,00,000/- instead of Rs 4,00,000/- as per books of accounts which merely based on the assumption which is unjustified.*
4. *The Memorandum of Association & business profile of the company it is clearly mention that it can sale resale and renting of property or land on profit basis or on commission basis Therefore treating the Profit on sale of land of Rs. 22,60,000/-(52,60,000-30,00,000) as income from short term capital gain against the law. As per the Memorandum of Association & business profile of the company it is clearly mention that it can sale & resale and renting of property or land on profit basis or on commission basis. Further, the double valuation of Short term penalty imposed by The Ld. A.O. also unreasonable as Assessee is been penalized twice in this circumstances once valuation as per books of accounts and another on the basis of Government Valuation. Hence treating the income as short term capital gain by The Ld. AO is unethical under law and should be withdrawn.*
5. *The Ld. A.O. has after treating business Profit on Sale of land of Rs: 22,60,000/- (52,60,000- 30,00,000) as income from short term capital gain. Further added the addition of Rs. 18,30,000/- as short term capital on the basics of sale deed, thereby rising the amount from short term: capital gain to Rs. 40,90,000/- which is unjustified as The Assessee is been penalized twice under the same circumstances.*
6. *The decision of Ld. A.O. to consider 60750 & 51750 equity shares @10 allotted to Shri Akhilesh Chandra Pal & Shri Manoj Pandey respectively of Rs 11,25,000/- as undisclosed income and treating the same as income of the Assessee is unethical, since he has not accepted the necessary documents for consideration at the time proceeding. We submitted the copy of Form- 2 & Minutes of the board of Meeting approving such share allotment with appeal before CIT (A).*
7. *The Assessee has presented all books of account of Asst. Year 2007-08 in the office of Lid, A.D time to time as per notice of Ld AO on date 12/10/2000 and rejection of books of accounts under section 145(3) and claiming that they are not genuine on assumption backs is inappropriate on the part of Ld. AO*
8. *Advances towards projects (Agra) of its 20,97,000/ was received from eight person and we have already enclosed the list address and PAN No of these persons. Out of these five persons didn't receive the confirmation letter send by income Tax Department, due to the change of there offices address. Therefore, the addition of Rs 15,52,000/ as income should be*

revoke.

9. *The learned AO is not justified in making an addition of Rs. 8.50 Cr As liability towards M/s Meerut Cine Enterprises Ltd. We had submitted the joint venture deed with M/s Meerut Cine Enterprises Pvt. Ltd. For making the commercial mall in Meerut City But the Ld AO has made the addition on the basis that no documentary evidences has been provided regarding such liability and treating the such as the income of the assessee.*
10. *The leaned officer is not justified making an addition of Rs. 5500000.00 on account of share application money received in Para 3 of the order. The share application money is received from the Directors of the Company Shri Manoj Pandey, Shri Akhilesh Pal, Shri Amish Kumar Tyagi and Shri Navneet Singh.*
11. *The Ld. A.O. has made the addition of Rs. 4,29,530/- 20% of Rs 21,47,655/- inspite all the details were produced before A.O. which is against the law of cannon of taxation.*
12. *That in any case and any view of the matter, action of Ld. CIT(A) in not reversing the action of Ld. AO in making the impugned addition/disallowance and framing the impugned assessment which is contrary to law and facts, void ab initio, beyond jurisdiction, and without giving adequate opportunity of hearing, by recording incorrect facts and findings and the same is not sustainable on various legal and factual grounds.*
13. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not reversing the action of Ld. AO in charging interest u/s 234A, 234B, 234C and of the Income Tax Act, 1961.*
14. *That the appellant craves the leave to add, modify, amend or delete any of the grounds of appeal at the time of hearing and all the above grounds are without prejudice to each other."*

2. At the outset, in this case the Ld. Counsel for the assessee made a prayer for admission of additional evidences. He has mentioned that these additional evidences go to the root of the matter and he prayed that additional evidences be accepted and the matter be remitted to the file of the Assessing Officer to consider the issue afresh in the light of the additional evidences.

- 2.1 Per contra, the Ld. DR did not have any objection to this proposition.
- 2.2 We have noted in this case that the Assessing Officer has made an addition of Rs. 9,86,96,530/- in the assessment order. Upon the assessee's appeal, the Ld. CIT(A) dismissed the appeal.
3. Now before us, the Ld. Counsel for the assessee prayed for the admission of additional evidences and prayed that the matter be remitted to the file of the Assessing Officer to consider the issue afresh in the light of the additional evidences.
4. We have also noted that the Ld. DR does not have any objection to this proposition. Hence, in the interest of justice, we admit the additional evidences and remit the issue to the file of the Assessing Officer to decide the issue afresh in the light of the additional evidences being submitted by the assessee. In the result, appeal by the assessee is allowed for statistical purposes.
5. The Grounds of appeal in **ITA No. 1799/Del/2014** are as under:-

"1. The Ld. Assessment Officer has wrongly added the amount incomes Rs. 9,88,99,941/- and imposing the Tax of Rs. 4,42,06,606/-, the addition Rs 9,88,99,941/- is wrongly made.

2. The Ld. Assessment Officer has not provided meaningful opportunity the Principal of the Company was not in Delhi during the noticed by 14.0 because his father was suffering from cancer looking after him, and second principal of company were suffering from flu was out of Delhi, they could riot the noticed by why compliance could not made. During test two year business activity the Company not functioning properly, only construction of one mail at Meerut City was started along with M/s Meerut Enterprises Ltd. due to certain disturbances with the landlord the construction project stopped.

3. Assessee has presented all account of Year 2007-08 the office of Ld. A.D. time to time as notice of A.O, on date 12/10/2009 and rejection of

books accounts under section 145(3) and claiming that they are genuine on assumption basics inappropriate the part AO.

4. That whole penalty proceeding based on addition income in assessment order u/s 143(3). the penalty levied liable quashes. It is necessary on the part AD establish filing of inaccurate papers the assessee concealment of income.

5. That case and view the matter, action CIT(A) reversing the action Ld. AO in making the impugned penalty and framing the impugned order law and facts, void initio, beyond jurisdiction, without adequate opportunity of hearing, by recording incorrect facts findings and the same not sustainable various legal and factual grounds.

6. That leave to add, modify, amend or delete the grounds of appeal at the time of hearing and all the above grounds are without prejudice to each other."

5.1 This penalty appeal is consequent to the quantum appeal dealt with by us, hereinabove. Since the quantum appeal has been remitted to the file of the Assessing Officer, this penalty appeal also stand remitted to the file of the Assessing Officer. The Assessing Officer shall consider the issue afresh after adjudicating the quantum appeal as directed by us, hereinabove. Adequate opportunity should be given to the assessee of being heard.

6. In the result, these two appeals of the assessee are allowed for statistical purpose.

Order pronounced in the open court on 21-6-2023.

Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Dated: 21.06.2023
(Pooja)

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	19.06.2023
Date on which the typed draft is placed before the dictating Member	19.06.2023
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	