

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'B', NEW DELHI**

**BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
SH. ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA No.5936/Del/2016 & 3306/Del/2017
Assessment Year: 2012-13 & 2013-14

DCIT Central Circle-28 New Delhi	Vs	E.T. Infra Developers Pvt. Ltd. E-9, Panchsheel Park, New Delhi-110017 PAN No.AACCE3646D
(APPELLANT)		(RESPONDENT)

Appellant by	Sh. T. Jamesh Singson, CIT DR
Respondent by	Sh. M.P. Rastogi, Advocate

Date of hearing:	12/07/2023
Date of Pronouncement:	14/07/2023

ORDER

PER N. K. BILLAIYA, AM:

ITA No.5963/Del/2016 and 3306/Del/2016 are two separate appeals by the revenue preferred against two separate orders of the CIT(A)-29, New Delhi dated 18.08.2016 and 23.02.2017 pertaining to A.Y. 2012-13 and 2013-14 respectively.

2. Since common grievance is involved in both the appeals they were heard together and are disposed of by this common order for

the sake of convenience and brevity though the quantum may differ.

3. For the sake of our convenience the grounds raised in A.Y.2012-13 are taken into consideration.

4. Briefly stated the facts of the case are that the assessee was incorporated on 13.04.2010 and A.Y.2011-12 was the first year of the assessee. The assessee is in the business of Real Estate and was developing World Trade Tower (WTT) in Noida, U.P. The search was conducted on the premises of the assessee on 18.10.2011 during which no incriminating material, unexplained cash or unexplained jewellery was found.

5. In Assessment Year 2011-12, based on certain website launched by one of the property brokers wherein the said broker had shown the launched price at Rs.9,500/- per sq foot irrespective of the floor size and location of the area. In the books of account for the Assessment Year 2011-12, the assessee stated that majority of the area was sold at Rs.6,500/- per sq foot, but certain area was sold at Rs.9,000/- per sq foot through one broker Mr. Naresh Grover of Nagpur and the difference in amount was paid to the said Mr. Naresh Grover. During the course of assessment proceedings, the Assessing Officer enquired from various persons who had booked the unit in the tower and almost all the persons had confirmed the price at which it was recorded in the books of account. The confirmation from Mr. Naresh Grover was also filed.

6. However, while framing the assessment for Assessment Year 2011-12, the Assessing Officer, in spite of such information available on record, proceeded to frame the assessment, thereby applying Rs.9,500/- per sq foot being rate available on the website, out of which 15% rebate had been allowed as discount and the net rate applied by the Assessing Officer was worked out at Rs.8,075/- per sq foot. Thereafter, the Assessing Officer, after applying such rate of Rs.8,075/- to the area booked, had made the addition in the hands of the appellant.

6.1 The CIT (Appeals), after examining all the evidences available on record as well as the enquiry made by the Assessing Officer, had deleted the addition in Assessment Year 2011-12.

6.2 On appeal filed by the Revenue, the ITAT vide order dated 28th July 2021 affirmed the order of CIT (Appeals) in Assessment Year 2011-12.

7. In Assessment Year 2012-13, the Assessing Officer has also made the addition on similar grounds after relying upon the papers/evidences which were discussed in Assessment Year 2011-12.

8. In Assessment Year 2012-13, the Assessing Officer had worked out the addition as under :

• Total area booked for sale up to 31 st August 2012	2,88,992 sq feet
• Sale consideration worked out @ Rs.8,075/-	Rs.2,33,36,10,400
• Less sale consideration already received	<u>Rs.1,76,19,44,448</u>
	Rs. 57,16,65,952
• Less the addition made in AY 2011-12	<u>Rs. 54,80,94,537</u>
• Balance difference addition made in AY 12-13	<u>Rs. 2.35.71.419</u>

9. In Assessment Year 2013-14, the Assessing Officer again proceeded on the similar basis as was done in Assessment Years 2011-12 and 2012-13, but while framing the assessment, he worked out the addition even taking into consideration the area booked in earlier years also.

10. In the light of the aforesaid facts, as mentioned elsewhere the entire quarrel has been considered and decided by the coordinate Bench in assessee's own case in A.Y.2011-12 in favour of the assessee and against the revenue. The relevant findings read as under :-

18. We have considered the rival arguments made by both the sides, perused the orders of the Assessing Officer and the learned CIT(A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find the AO in the instant case made addition of Rs.54,80,94,533/- to the total income of

the assessee on the ground that the assessee has shown the rate of booking in the range of Rs.5000/- per sq. ft. to 6500/- per sq. ft whereas, the website of the assessee quoted the rate @9,500/- sq. ft. According to the Assessing Officer, during the course of search, documents found and seized show that different rates have been quoted/booked for the same area and the same project varying from Rs.5,000/- to Rs.9,000/-. He, therefore, adopted the average rate @ Rs.8075/- on the total area of 255398 sq. ft. and considered the total sale consideration of Rs.2,06,23,38,850/-. After giving credit to the sale already declared by assessee, the AO made addition of Rs.54,80,94,533/- being the difference. We find the learned CIT(A) deleted the addition basically on the following grounds:-

- (i) The year under appeal is the first year of operation of the company as it is incorporated on 13th April 2010.*
- (ii) In the search account, which took place on 18th October 2011, no cash, valuables or any kind of unexplained investment appear to have been found for the year under consideration.*
- (iii) During the course of post search proceedings, all the buyers from whom the enquiries were made*

have confirmed to have given the amount as duly recorded in the books of the appellant.

- (iv) The contention of the AO stating that the buyers did not admit to have made such payment in cash as it is beneficial to both the parties have no basis.*
- (v) As far as the veracity of rate quoted in the alleged website of the appellant, the appellant denied to have owned the same and was not in the knowledge of the appellant. In the website, the rate has been given at Rs.9,500/- per square foot for that project of the appellant. However, it is not mentioned in the website that whether it is for the carpet area, built-up area or super built-up area. The amenities include quality of construction, special locational benefits and other value added facilities have not been mentioned in the website.*
- (vi) Nothing has been mentioned about the responsible person for contract or any address as per the snapshot shown in the assessment order. Therefore, whether it is launched by the appellant or by Mr. Sanjay Singh will not make any difference as any rate quoted in general cannot be made the basis for addition on presumption basis, more particularly when all such actual receipts have been duly accounted for in the books of the appellant nor doubted by the AO.*
- (vii) Post such enquiry reveals that no "on money" has been paid by such investors. Therefore, it is only academic to say that the affidavit of Mr. Sanjay Singh is notarized or not, website actually hosted by Mr. Sanjay Singh or the appellant who has made payment for website etc. The quotation for higher rate in the website will have the element of negotiation while finalizing the deal and accordingly the rates quoted in the website are not sacrosanct.*
- (viii) In the real estate business, the scope of negotiation is always there and the same is based not only on the capacity of buyer, time schedule for payment but also the prime location, present need of the buyer etc.*

- (ix) *The rates mentioned in the website are only indicating and are on higher side for the purpose of advertisement so that the same can be negotiated to the satisfaction of both the parties and is an usual practice in the business of real estate.*
- (x) *During the course of search, no cash or any other unexplained investment etc. has been found to corroborate that any on money has been received by the appellant. The difference in rate of booking/sale between different buyers has been explained by the appellant, particularly that such high rate of transaction shown in the books is done through a broker Mr. Naresh Grover and the differential amount between the booking made by Mr. Naresh Grover and the actual price fixed between the assessee and Mr. Naresh Grover has been actually paid and accounted for in the books of account. In some cases of Mr. Naresh Grover, the high rate booked was cancelled and no brokerage was paid to Mr. Naresh Grover. Accordingly, the actual price derived by the appellant is within the range of Rs.5,000/- to Rs.7,000/- per square foot which is also more than the prevailing circle rate and all the transactions have been made above the circle rates.*
- (xi) *As far as seized documents are concerned, it cannot be concluded that any "on money" has been received by the assessee coupled with the fact that no corroborative evidence either at the time of search or later on was brought on record to show that the cash has been transacted.*
- (xii) *No action has been taken by the AO/Department in hands of the buyers/investors who allege to have paid unaccounted cash towards "on money".*

18.1. We do not find any infirmity in the order of the learned CIT(A) on this issue of deleting the addition made by the Assessing Officer. It is an admitted fact that this is

the first year of the operation of the company and during the course of search no cogent or corroborative evidence was found to substantiate the receipt of “on money” from any of the buyers. Further, no cash, jewellery or other valuables or investment was found. We, therefore, find force in the argument of the learned counsel for the assessee that had such huge amount been received at the time of booking of flats in cash as alleged by the Assessing Officer, then some short of unaccounted cash, jewellery or other valuables or investment would have been found whereas nothing of that short has been found.

19. So far as the website is concerned, quoting the rates @ 9,500/- per sq. ft. per se in our opinion cannot be sacrosanct in absence of any other corroborative or cogent evidence found during the course of search. The buyers to whom the space has been sold have confirmed the rate as declared by the assessee in its books of accounts. Merely saying that it suits the buyers as they have invested their black money in cash and it is beneficial to both the

parties, in our opinion, is not sufficient to fasten such huge liability in the hands of the assessee by merely stating that there is unholy agreement between the buyer and the seller. The various instances given by the Assessing Officer at para 4.2 of the assessment order, wherein, he issued summons to nine parties and these rates are already recorded in the books of account and there is no discrepancy. We find merit in the arguments of the learned counsel for the assessee that the Revenue cannot force the assessee to sell its space at a particular rate and the department cannot dictate terms to the assessee to sell at a particular rate. The whole addition made by the Assessing Officer in the instant case, in our opinion is purely based on presumptions and surmises and not based on any cogent or corroborative evidence. Since, the buyers to whom the space have been sold have admitted to have purchased at the price shown by the assessee in the books of account and since no addition has been made in the hands of those buyers and the basis of entire addition is on account of the price quoted in website, therefore, we find force in the arguments of the learned counsel for the assessee that such addition made by the AO merely on presumptions and surmises is not sustainable. We find the website does not give the rate as to whether it is carpet area or built up area or super built up area or the

amenities, the quality of construction, special locational benefits and other value added facilities, etc. Nothing has been mentioned about the responsible person for contact or any address, as per the snapshot shown in the assessment order. Even the post search enquiry also does not reveal any "on money" paid by any of the investor.

20. So far as page No.10 of Annexure A-24 found and seized from C-1, Sector 16, Noida having cash receipt of Rs.86,70,816/- for booking of Unit No.617 and 618 is concerned, we find the assessee has already demonstrated that these are two independent units sold to two different persons and in fact the assessee has sold the above two flats @Rs.6000/- per sq. ft. Whereas the average price of the two flats comes to Rs. 5000/- per sq. ft. We, therefore, find merit in the argument of the ld. Counsel for the assessee that the same cannot be the basis for making huge addition by adopting the rate of Rs.8,075/- per sq. ft.

21. We also find force in the argument of the learned counsel for the assessee that as per the guidance note issued by the ICAI in AS-9, income has to be shown on percentage completion method if the assessee company has sold at least 25% of the total salable area or had received 10% of the total

realisable value of the project. Since, the Assessing Officer in the instant case has himself noticed that the assessee has booked less than 25% of the area during the year (booking of 295000 sq. ft. out of 17,38,000 sq. ft.) and has not realised 10% of the project cost, therefore, he is not justified in assuming that the whole amount is taxable in the year under consideration. Since, there is no iota of evidence that the assessee has received any extra money over and above the booking rate shown by the assessee in the books of account and the entire addition in our opinion is based on surmises, conjectures and presumption, therefore, in view of the above discussion and in view of the detailed reasoning given by the learned CIT(A) on this issue, we do not find any infirmity in his order deleting the addition of Rs.54,74,44,533/-. Accordingly the order of the learned CIT(A) on this issue is upheld and the grounds raised by the Revenue are dismissed.

11. As no distinguishing decision has been brought to our notice, respectfully following the decision of the coordinate Bench (supra) we decline to interfere with the finding of the CIT(A) the common ground in both the appeals are dismissed.

12. In so far as the deletion of the addition of Rs.10.80 lacs made by the AO on account of notional interest is concerned we

find that the CIT(A) has given a categorical finding that the advances made by the assessee are in the ordinary course of its business and are given in compliance of its business objective. We also find that the CIT(A) has given a finding that no interest expenditure has been incurred towards the payment of any unsecured loans the only interest payment has been made towards the acquisition of land and paid to the Noida authorities which is also capitalized towards work in progress.

13. On these uncontroverted facts we do not find any reason to interfere with the findings of the CIT(A). Ground no.4 in A.Y.2012-13 is also dismissed.

14. In the result, both the appeals by the revenue are dismissed.

Order pronounced in the open court on 14.07.2023.

Sd/-
[ANUBHAV SHARMA]
JUDICIAL MEMBER

Sd/-
[N.K. BILLAIYA]
ACCOUNTANT MEMBER

Dated: .07.2023

Neha

Copy forwarded to:

1. Appellant
2. Respondent
3. CITi
4. CIT(A)
5. DR

Asst. Registrar
ITAT, New Delhi