

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

**Before Sh. C. M. Garg, Judicial Member
Dr. B. R. R. Kumar, Accountant Member**

ITA No. 2093/Del/2022 : Asstt. Year: 2012-13

Trishla Buildtech Pvt. Ltd., C/o Rajiv Goel & Associates, 179, Bank Road, Ambala Cantt. Haryana-133001	Vs	DCIT, Central Circle, Karnal, Haryana-132001
(APPELLANT)		(RESPONDENT)
PAN No. AADCT8691C		

ITA No. 2468/Del/2022 : Asstt. Year: 2012-13

DCIT, Central Circle, Karnal, Haryana-132001	Vs	Trishla Buildtech Pvt. Ltd., C/o Rajiv Goel & Associates, 179, Bank Road, Ambala Cantt. Haryana-133001
(APPELLANT)		(RESPONDENT)
PAN No. AADCT8691C		

**Assessee by : Sh. Ashwani Kumar, CA &
Sh. Hitesh Minhas, Adv.
Revenue by : Sh. Amit Katoch, Sr. DR**

Date of Hearing: 20.07.2023

Date of Pronouncement: 09.08.2023

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeals have been filed by the assessee and the Revenue against the orders of Id. CIT(A)-3, Gurgaon dated 29.07.2022

2. In ITA No. 2093/Del/2022, following grounds have been raised by the assessee:

"1. That the Id. CIT(A) has erred in law and on facts in confirming the actions of learned AO in reopening the assessment proceedings u/s 147 of the Act, which is bad in law.

2. That the Id. CIT(A) has erred in law and on facts in holding that the assessee had failed to prove genuineness of payments of Rs.1,75,00,000/- for buyback of flats which was not claimed as expenditure during the year but remained as part of work in progress as on 31.03.2012.

3. That the Id. CIT(A) has exceeded his jurisdiction by advising the AO to make disallowances of Rs.1,75,00,000/- in the relevant years during which revenue was booked from sale of flats purchased under buyback scheme."

3. In ITA No. 2468/Del/2022, following grounds have been raised by the Revenue:

(i) On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law in deleting the addition of Rs. 1,85,00,000/- on account of unexplained credit by ignoring the facts that the limb of Section 68 of the Act i.e. genuineness of transaction was not proved.

(ii) On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law in deleting the addition of Rs. 1,85,00,000/- made on account of unexplained credit by holding that the assessee has proved all the three limbs of section 68 of the Act, whereas Ld. CIT(A) himself doubted the whole transaction while deciding the issue of addition of Rs. 1,75,00,000/- thus, the order of Ld. CIT(A) is self contradictory.

(iii) On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law in deleting the addition of Rs. 1,85,00,000/- on account of unexplained credit on one hand holding that the assessee has proved all the three limbs of section 68 i.e. identity, genuineness and creditworthiness, on the other hand it was held by Ld. CIT(A) himself that whole arrangement i.e. sale of

buy-back of flats was nothing but in the nature of colourable device."

Reopening – Issue notice u/s 148:

4. The reasons recorded by the AO for issue notice u/s 148 are as under:

"Sub:- Assessment proceedings for the A.Y. 2012-13 u/s 148 of the I.T. Act, 1961 in your case-Regarding

Please refer to your letter dated 28.04.2018 received in this office on 08.05.2018 wherein requested to treat the originally filed return on 29.09.2012 as a valid return in response to notice u/s 148 of the I.T. Act, 1961 dated 31.03.2018 and further requested to provided copy of reasons recorded for re-opening the assessment. Accordingly, notice u/s 143(2) dated 21.05.2018 has been issued to you and case fixed for 28.05.2018. On the fixed date, you have again filed letter in 'Dak' requested therein for copy of reasons recorded for re-opening the assessment. Accordingly, as per your request the copy of reasons recorded for re-opening the assessment are being supplied to you as under:-

"Reasons for issue of Notice under section 148 for reopening of assessment u/s 147 of the Income Tax Act, 1961.

"1. The assessee company has derived income from business of real estate. The return of income for A.Y. 2012-13 was filed on 29.09.2012 declaring total income at Rs. 60,825/-. Return was processed u/s 143(1) of the Income tax Act, 1961 on 14.05.2013 accepting the returned income of Rs.60.825/-.

2. A search & survey action u/s 132 of the I.T. Act, 1961 was carried out at Maharishi Markandeshwar University Group of Cases, Ambala on 31.10.2014. Also a survey u/s 133A of the I.T. Act, 1961 was

conducted at business premises of assessee company being connected case with MMU Trust group.

3. During the course of search proceedings, it was noticed that the group companies and Individuals of MMU Group have received substantial amounts from the assessee company in various AYs for various reasons. It was found that assessee company has paid commission and rent to the group companies and promoters of MMU Trust Group during F.Y. 2011-12 relevant to the A.Y. 2012-13 without any business purpose. It was also found that the company had booked expenditure in account of payments made to MMU group on account of buy back scheme. The details of the such amounts are under:

I) Commission Paid:-

Sr. No.	Name of the group company of MMU Trust Group	Amount
1.	M/s M.M. Properties and Infrastructure Pvt. Ltd.	9,60,000/-
2.	M/s M.M. Infratech Pvt. Ltd.	9,10,000/-
3.	M/s Eternity Infratech Pvt. Ltd.	4,95,000/-
	Total	23,65,000/-

II) Rent Paid:-

Sr. No.	Name of the individual/promoter of MMU Trust Group	Amount
1.	Sh. Tarsem Garg	8,80,000/-
2.	Smt. Santosh Garg	8,80,000/-
	Total	17,60,000/-
	Grand Total (I) + (II)	41,25,000/-

Buy Back scheme:-

It is seen that the assessee company has claimed expenses of Rs. 3,60,00,000/- on this count being shown paid to MMU group in the FYs 2011-12 & 2012-13 (AY 2012-13 & 2013-14)

During the survey proceedings in the case of the assessee company, the statement of Sh. Harish Gupta, MD of Trishla Group was recorded on 31.10.2014 and continued upto 02.11.2014. He was questioned to furnish justification for expenses claimed on account of commission, rent as well as loss booked under buy back scheme with members of MMU Trust Group. The relevant extract of the statement is reproduced as under:-

"Q.35. Do you know Mr. Vishal garg and/or Mr. Tarsem Kumar Garg personally. Also apart from this transaction have you undertaken in any capacity any business or personal transaction of any nature with the above mentioned persons.

Ans. Yes I know Mr. Tarsem Kumar Garg and Mr. Vishal Garg as our company had rented a building in Chandigarh which was owned by them and also we did business transactions for selling of flats in our project for their personal investment as well as sale for getting commission from our company.

Q.36. Can you please specify the nature of investments made by the said persons in your project?

Ans. I don't remember the exact no. flats sold by me to the mentioned persons in Q. No. 35. Also I want to clarity that they have also referred to other clients for purchase of our flats and they have received commission in lieu of that.

Q.37. The rent paid by you to Mr. Tarsem Garg and Mr. Santosh Garg in F.Y. 2011-12 and F.Y. 2012-13 was of how much amount. How was it paid? Do you have rent deed for the same presently?

Ans. Total rent paid in these two F.Y.s was approx. Rs. 36 Lacs rupees and rent deed will be provided subsequently as the same is not available in this office. The payments have been made through cheque and TDS has been duly deducted which may be verified

through bank A/ c or ledger A/ cs which have been provided to you. No further transactions of rent was made with these persons.

Q. 38. I am showing you the. Commission A/c legal of Trishla Buildtech P. Ltd., of F.Y. 2012-13. Kindly identify the parties, Mr. Tarsem Garg and Mrs. Santosh Garg or any related concern to whom commission was paid?

Ans. Mr. Tarsem Garg and his family members contacted me and told that they have group of clients who were interested to buy flats and they negotiated commission with me for maturing that sale after the booking of their referred flats. We have give them commission cheque in their various concerns and we have deducted the TDS and duly deposited to Govt. A/c.

Q. 39. Are you aware that these are the bogus companies being run by MMU Trust Mullana and persons concerned with it?

Ans. I am not aware about their company profit at all. I had merely paid the commission.

Q.40. Can you give the status of bookings/investments made by Mr. Tarsem Garg and or his family members?

Ans. Mr. Tarsem Garg and his family members purchased a few flats in our housing project with the commitment and assurance of certain profit in specified time. When they found that market of real estate is becoming slow, then they opted to return the flats booking and get committed premium on their paid amount.

Q.41. Kindly give details of the buyback scheme?

Ans. Buy back scheme is booking of flats for sales promotion to give comfort and confidence to our clients. They will surely get good return on their investment else we provide to buy back at premises. Through this but back scheme is not a part of all agreement to sale,

however if and when we give, this after to any person the same is mentioned in addition to the agreement to sale.

Q.42. Can you provide a. copy of agreement to sale of any of the buyback scheme with added clause of buyback offer?

Ans. You can go through the agreement copy for flat no. C-1 76 which was booked in the name of Mr. Tarsem Garg and verify the condition of buy back.

Q. 43. Please provide a list of clients to whom you had. offered this buy back scheme?

Ans. Just now I don't have the exact list of these clients. I will provide the same later on.

Q. 44. Can you give the audited balance sheets and. P&L A/c of the F. Y. in which these buy back scheme were offered to you or can you give any documentary evidence whatsoever regarding the working or the modus operandi of the buyback schemes. Also provide a copy of your bank A/c statements from which these payments made collaborating it with the amounts received by initially during the booking of these flats?

Ans. I am trying my best to provide the audited statements. Hopefully the same shall be provided during the statement recording.

Q.60 With regard to the rented premises i.e. kothi No. 526, Sector-16, Chandigarh, complete details of other expenses like electricity bill, water bills and details of furniture and fixtures may please be provided. You may produce any other relevant document which may prove your tenancy at the above stated kothi during F.Y. 2011-12 and F.Y. 2012-13?

Ans. This H. No. 526, Sector 16A was rented to my company Trishla Buildtech P. Ltd., for a period of approx. 2 years and there was no

extra charges paid for electricity or water bills which were inclusion in the rent. It was used for liaison and promotion of sales and I used to sit there for promotional work. A rent was paid through cheque only to the landlord and TDS duly deducted. Rent deed was prepared for the same which we have tried to locate but still it was not been found. It may also be the part of papers which are collected by the Sales Tax Department. I will try to find out or will contact to the landlord for supply of copy of the same and that will be provided to the respective authorities.

Q. 61. You have not been able to provide us the rent agreement in spite of the repeated opportunities during the last 3 days, nor you were able to provide any other documentary evidence in form of electricity bill/water bill etc. to prove your tenancy for H. No. 526, Sector -16A, Chandigarh for the F. Y. 2011-12 & 2012-13 for which you had paid Sh. Tarsem Garg and Mrs. Santosh Garg, a total rent of approx. Rs. 36 lacs for these two years. You are asked to show cause as to why this rent paid may not be treated as a bogus expense by you and an accommodation entry provided to the Garg family?

Ans. As stated earlier that H. No. 526 was rented to our company M/s Trishla Buildtech Pvt. Ltd. and rent was paid through cheques and TDS was duly deducted and deposited to Govt. a/c. As concerned to electricity and water bills that is not provided because it was paid by them. We had this facility inclusive in our rent and as I told earlier that I will arrange the rent deed soon from Sales Tax Department or will try to find out everywhere to handover you as soon as possible. The location of this address was hopefully beneficial for the growth of business of our concern.

Q. 62. In reference, to q. no. 38, please identify the flats for which commission was paid to Sh. Tarsem Garg and/or his family members or business concerns namely MM Properties and Infrastructure Pvt. Ltd., M/s MM Developers Pvt. Ltd., M/s MM Infratech Pvt. Ltd., M/s

Bitspace Developers Pvt. Ltd., and M/s Eternity Infratech Pvt. Ltd., in F.Y. 2010-11, F.Y. 2011-12, F.Y. 2012-13?

Ans. Just now I don't remember the exact no. of flats for which commission was paid.

Q. 63. You have not been able to provide us the details of the flats for which commission was paid. You have not been to provide any other kind of documentary evidence in support of commission found at the premises. In view of the above, please show cause so as why an amount of Rs. 68,50,000/- paid as commission to the companies mentioned in q. no. 62 for the F.Ys. 2010-11, 2011-12, 2012-13 may not be treated as the bogus expense and accommodation entry given to Sh. Tarsem Garg through his business concerns?

Ans. I respectfully deny this allegation that I have not provided the documents related to this subject. I have already provided ledger a/c bank a/c ledger, details of payments give by cheque, ledger a/c showing, TDS deducted and deposited and bank a/c statement cannot be provided today is holiday and I will provide any time when it will be demanded by the department after today. You were asked in q. no. 43 to provide a list of clients to whom you had offered the buyback scheme. You have provided us the ledgers of Sh. Tarsem Garg, Sh. Vishal Garg and Sh. Vishal Garg, HUF which shows that they had booked the flat and subsequently the same was cancelled by them and money was refunded to them which as per your ledgers has been twice the amount for which the fiat was originally booked i.e. for e.g. For flat no. C-I 76 an amount of Rs. 12.5 lacs was paid by Tarsem Garg on 06.09.2011, subsequently on 12.10.2011, the same bookings seen to have been cancelled and amount of Rs. 25 lacs was given back to Sh. Tarsem Garg. There is a loss of Rs. 12 lacs was booked on account of buyback of flats. The same has been done in flats C-I 76 to C-I 77 to C-I 87 which are either in the name of Sh. Tarsem Garg, Vishal Garg or Vishal Garg HUF. Thus, you have

booked a loss of Rs. 1.75 crores on account of buyback of flats scheme specifically in the case of Sh. Tarsem Garg and family. Now, however another ledger list of cancelled flats has been provided by you, the details are as follows:-

- 1. Flat No. C-121 -Aruna Malik*
- 2. Flat No. C-124-Samian Agarwal*
- 3. Flat No. C-16-Sourav Agarwal*

From the ledgers, it is clear that with these people also, buyback scheme was undertaken, however no loss has been booked by you in these cases i.e. if an amount of Rs. 10 lacs was received from the customer in buyback the same amount was returned to the customer. Thus, it is clear that only in case of Sh. Tarsem Garg and family, the buyback scheme resulted in excess money being paid to them. You are asked to show cause as to why this amount of Rs. 1.75 crore may not be disallowed as a bogus expense booked by you for providing accommodation entry to Tarsem Garg and family?

Ans. The buyback scheme is not a usual scheme which we offer regularly to the customers. However during the time of financial crunch and specifically in this case Tarsem Garg and family were ready to advance a huge amount at a very short duration since these flats were booked by them in bulk, so we offered them the buyback scheme. However in other cases as mentioned by you, there were individuals who have cancelled their booking on their own either on account of inability to pay the installments or any other reason. Thus the same amount was returned to them and no buyback scheme was offered to them. Thus we offer buyback scheme who are ready to purchase flat in bulk. In reply to show cause, buyback scheme is offered by our company to the customer only to get help from them in sustain the business by way of getting a handsome fund to establish and promote the business of the company. As these funds

are lifelines of the company's business. So the same may be treated, as allowable expenses.

Q. 69. You were also earlier during the statement, to produce a copy of agreement wherein buyback scheme was offered. However the same was not been provided by you, also as mentioned earlier in the statement, copy of agreement of Sh. Tarsem Garg and his family members with whom buyback scheme was undertaken have not been provided by you. You have been given an opportunity to go through all of the impounded material which was seized from the site office of Trishla City and Trishal Little India project site and the same was not found. What do you have to say in this regard?

Ans. As stated earlier, I again submit that many of our documents, files and other records were seized by the Sales Tax Department, Punjab during a survey conducted in March, 2013. These files might be there. I will request the authorities to go through the record to provide a copy of the same. Just in case, it is not there. I will search for it and try to provide your goo self at the earliest as and when required.

Q. 70 Is there anything else which you wish to state?

Ans. Our company is in the business of builders and developers and same in the case with our firms and in no way provide service as contractors. We are following the project completion method for a/c purpose continuously since inception and department is also accepting our returns accordingly. We have tried our best to provide you all kind of held, records and information readily available with us at our offices. If anything has been left we assume you that we will try to produce the same to you as and when required by the department."

From perusal of the above statement, it transpires that the expenditure claimed by the assessee on account of rent, commission

& buy back scheme was merely a fictitious loss and in the shape of accommodation entries. This becomes evident from the following facts

- a) For flat no. C-176 an amount of Rs. 12.5 lacs was paid by Tarsem Garg on 06.09.2011, subsequently on 12.10.2011, the same bookings seen to have been cancelled and amount of Rs. 25 lacs was given back to Sh. Tarsem Garg. This negates the claim of the assessee company that there was financial crunch as the small amount of Rs. 12.5 lacs was taken & returned twice of the said amount immediately in the next month.*
- b) The above findings shows falsity of the claim of the assessee company that, the money was invested by the MMU group with assurance of certain profit in specified time and when the market of real estate became slow, they opted to return the flat booking.*
- c) No such loss found to have been incurred by the assessee company in respect of other bookings.*
- d) It was claimed that MMU group was ready to invest considerable amount by way of booking of flats. However, from the details available, it is found that the MMU group didn't invest considerable amounts with the assessee company.*
- e) Sh. Harish Gupta, M.D. of Trishla Group failed to submit or produce any agreement regarding the claim of loss on buy back scheme during the survey proceedings and post survey proceedings.*
- f) It was also found that the MMU group has taken such accommodation entries from other builders such as Ajanara India Ltd, New Delhi etc.*
- g) In respect of rent, the assessee company could not produce rent agreement in respect of H.No. 526, Sector 16-A, Chandigarh. Though claimed to have been taken on rent, the*

assessee could not produce copy of electricity bill or water bill which is a reasonable evidence of usage of the property. Further, the property was claimed to have been used for promotional work. However, nothing more than such claim was furnished. Payment of rent by cheque & TDS from such payments was in fact the deliberate arrangement to launder the unaccounted income of MMU group.

h) Similarly, in respect of Commission paid, the assessee could not give the services rendered by various persons from MMU group to the assessee company. Also the assessee failed to give the details of the clients received due to efforts of persons from MMU group. In fact, the assessee company could not give any details of flats sold by it due to the efforts of the persons Of MMU group.

6. Keeping in view the above facts, it is clear that the assessee company has claimed expenditure on account of abovementioned expenses only to provide accommodation entries to the MMU group. It is to be noted that that providing such entries was beneficial to both the parties for the reason that MMU group could convert its unaccounted money in the guise of commission, buy back profit, rent etc. On the other hand; the assessee company could reduce its profit by claiming such expenses which were not incurred in reality.

7. In view of the aforesaid discussion, I have reasons to believe that the income of Rs. 41,25,000/- on account of rent and commission has escaped the assessment for AY 2012-13. Further, the expenditure claimed on account of buyback scheme represents income which has escaped assessment by reason of the failure on the part of the assessee company to disclose fully and truly all material facts necessary for its assessment for the assessment year 2012-13.

2. *The previous approval of the Pr. CIT(Central), Gurugram has been obtained for issue of notice as conveyed vide office letter F.No. Pr.CIT(C)GGN/Approval 147/2017-18/8120 dated 31.03.2018.*

You are required to file your reply on the above mentioned points alongwith substantial documentary evidence on or before 11.06.2018. Also furnish one set of ITR, balance sheet, profit & loss a/c, audit report alongwith all the annexures & notes on accounts."

5. The crux of the reasons are as under:

6. The assessee paid commission of Rs.41,25,000/- to two persons namely, Sh. Tarsem Garg and Smt. Santosh Garg who are the trustees/promoters of MMU group and their other entities. The AO alleged that such "rent paid" was an "accommodation entry" given by the assessee group to MMU group.

7. The AO held that providing such entry is beneficial to both the parties for the reason that MMU group could convert its unaccounted money in the guise of rent whereas the assessee company could reduce its profit by claiming such expenses which are not incurred in reality. The AO presumed that the MMU group has given Rs.41,25,000/- to the assessee in cash and the assessee has given cheque to the MMU group on account of rent and debited the same in his account as an expense. It is not in question that the rent received by any entity is a revenue receipt and taxable as the income earned. The AO has not really brought out any tangible material to prove the theoretical proposition. There is no whisper in the reasons recorded about any fresh material available post assessment to form basis of AO about bogus expenditure as

alleged. In the entire reason for reopening, statement of Sh. Harish Gupta, Director of Company recorded during survey on 31.10.2014 is reproduced which is neither incriminating nor can be a basis for reopening of assessment. Hence, at the outset, we hold that the reopening cannot be held to be valid and so as the assessment completed based on such notice.

Disallowance a/c of Buyback Scheme and Cash Credit:

8. The AO held that the assessee has claimed an expenses of Rs.3,60,00,000/- on account of buyback scheme and the amount is shown to be paid to MMU group in the A.Y. 2012-13. The AO alleged that the assessee has obtained booking of 12 units from three persons against which an amount of Rs.1.85 Cr. has been received. These 12 units have been brought back by the assessee company by paying these three "advance booking parties" by paying them an extra amount of Rs.1.75 Cr. as premium in addition to the refund of Rs.1.85 Cr. received as advance booking amount.

9. The AO made addition of Rs.1.85 Cr. on account of the receipt of "advance booking" treating the same as unaccounted money of the assessee and also Rs.1.75 Cr. as non-allowable expenditure u/s 37(1) of the Income Tax Act, 1961. The addition of Rs.1.85 Cr. has been deleted by the Id. CIT(A) and hence the revenue appeal before the Tribunal. The Id. CIT(A) has also held that the amount of Rs.1.75 Cr. be added to the total income of the year in which the income has been booked for the sale of flats purchased under buyback scheme. Hence, the assessee as well as the Revenue are in appeal before us. Both the issue are being dealt as under:

ITA No. 2468/Del/2022 (Revenue Appeal)**Deletion of Rs.1.85 Cr. / Cash Credit:**

10. Heard the arguments of both the parties and perused the material available on record.

11. Facts relevant to the adjudication of this issue are that the assessee is a real estate developer engaged in developing a project by name "Trishala City" at Zirakpur on 12.77 acres of land. During the course of reassessment, the AO observed that Sh. Tarsem Garg (HUF) and Sh. Vishal Garg (HUF) booked 4 flats each in the project of the assessee on 31.05.2011 and paid an amount of Rs.5,00,000/- as token money. Later, the buyers agreement signed on 23.07.2011 for a consideration of Rs.3,60,00,000/- and the complete payment was envisaged over a period of 3 years and the assessee would given possession of the flats after three years and on receipt of full sale consideration. On 05.09.2011, an addendum agreement was made to the effect that if the buyers were ready to make the payment of full and final sale consideration immediately against all the 12 flats, the assessee would offer them a discount of Rs.1,85,00,000/- and also purchase the entire flats from them after a period of 4 months from the date when payment plan was agreed (31.05.2011) at consideration of Rs.3,60,00,000/-. The purchasers have paid Rs.1,85,00,000/- to the assessee and subsequently all the flats were brought back by the assessee after making a payment of Rs.3,60,00,000/- in October 2011.

12. The AO held that in the original agreement to sell, there was no clause of buyback scheme and the addendum agreement

dated 05.09.2011 was after thought. The AO held that the assessee produced a photocopy of such addendum agreement during the assessment proceedings, however, the original agreement was neither found nor produced by the appellant despite sufficient opportunities during the course of survey proceedings u/s 133A of the Act. It was observed by the AO that the appellant has failed to establish genuineness, source of payment and creditworthiness of the buyers in respect of receipt of amount of Rs.1,85,00,000/- from them which included the token advance of Rs.5,00,000/- initially received against booking the flats. It was held by the AO that the amount of Rs.1,85,00,000/- was deemed income of the assessee as the credits were unexplained.

13. The Id. CIT(A) deleted the addition made by the AO on account of unexplained credit of Rs.1,85,00,000/-.

14. The details of the amounts paid to the assessee from the three parties on account of purchase of 12 flats are as under:

1. Tarsem Garg HUF – Rs.52,00,000/-
2. Vishal Garg – Rs.52,00,000/-
3. Vishal Garg HUF – Rs.81,00,000/-

15. The sources of the above payments are as under:

1. Tarsem Garg HUF – Rs.52,00,000/-

An amount of Rs.2,00,000/- was paid on 14.04.2011 and Rs.50,00,000/- was paid on 06.09.2011. The amount of Rs.50,00,000/- has been paid out of the amount received from M/s Santosh Hostel as repayment of unsecured loans. This fact has been duly supported with the confirmation from Smt.

Santosh Garg. The amount of Rs.2,00,000/- was given out of Rs.6,60,000/- withdrawn vide cheque on 28.03.2011. The copy of the ITRs along with computation of income, copy of bank statements have been submitted before the revenue authorities.

2. Vishal Garg – Rs.52,00,000/-

An amount of Rs.2,00,000/- was paid on 14.04.2011 and Rs.50,00,000/- was paid on 23.09.2011. The amount of Rs.45,00,000/- has been paid out of the loan amount received from Oriental Bank of Commerce and the remaining amount paid from repayment of unsecured loan of Rs.12,55,842/- from MMU University. The confirmation from MMU University has been duly filed along with the bank statement and the ITR consisting of computation of income. It was also submitted that the case of Sh. Vishal Garg was assessed by the same Assessing Officer u/s 143(3) for the same Assessment Year and no addition has been made in the hands of Sh. Vishal Garg.

3. Vishal Garg HUF – Rs.81,00,000/-

An amount of Rs.1,00,000/- was paid on 14.04.2011 and Rs.50,00,000/- was paid on 06.09.2011 and Rs.30,00,000/- was paid on 29.09.2011. The amount of Rs.80,00,000/- has been paid out of the amount received from Smt. Santosh Garg. This fact has been duly supported with the confirmation from Smt. Santosh Garg. The copy of the ITR along with computation of income, copy of bank statements have been submitted before the revenue authorities.

16. These details have been remanded to the AO by the Id. CIT(A) wherein the AO could not bring anything on record to counter the identity, creditworthiness of the persons and

genuineness of the transactions. The AO has duly accepted the evidences submitted by the assessee and no dispute has been raised by the AO during the remand proceedings on this issue. Hence, we hold that the Id. CIT(A) has rightly deleted the addition. The appeal of the Revenue on this ground is dismissed.

ITA No. 2468/Del/2022 (Revenue Appeal)

ITA No. 2093/Del/2022 (Assessee Appeal)

Disallowance u/s 37(1)/Buyback Scheme:

17. The AO made disallowance of Rs.1,75,00,000/- paid by the assessee to the three parties namely, Tarsem Garg HUF, Sh. Vishal Garg and Vishal Garg HUF on account of buyback of 12 flats. These flats have been booked by paying an amount of Rs.1,85,00,000/- and sold to the assessee for Rs.3,60,00,000/-. Thus, the assessee has paid an amount of Rs.1,75,00,000/- which is taxable in the hands of the recipients as profit against sale of booking. Further, the assessee having these 12 flats and paid an amount of Rs.3,60,00,000/- to these 3 parties in turn sold the 12 flats at rate of Rs.4,16,00,000/-. Thus, the assessee made a profit of Rs.56,00,000/- on the sale of 12 flats.

18. At the outset, it was submitted that the amounts have not been claimed in the P&L account and hence, we hold that no disallowance is called for in the instant year.

19. However, we also find that the Id. CIT(A) held that the amount of Rs.1,75,00,000/- be disallowed in the year in which these 12 flats would be sold.

20. We have gone through the entire issue in detail.

21. We find that the AO made the alleged disallowance on the grounds that the addendum agreement is not signed in the presence of witness and as such not verifiable. It is not in dispute that the agreement is signed by the seller and the buyer. The law in respect of sale agreement is clear that a contract will be said to be valid if signed by even one party and accepted by other. The requirement of witness becomes more relevant in case of any dispute arising in between the parties. In this case both parties have confirmed the transaction and absence of signatures of witness does not make the agreement unverifiable when both the executants have confirmed the agreement. The revenue's allegation was that there was no such buyback offered of any other customer is also against the facts on record. The similar arrangement has been made with two other customers namely, Sh. Pushpinder Bansal and Smt. Anju Khanna wherein the total payment has been reduced by Rs.14.33 lacs and Rs.15.33 lacs respectively. Further, it is also a fact on record that the payment under construction plan was to be realized in 30-36 months as such the cash discount is offered at the prevailing market rate of present value of future cash flow. In this case, inspite of giving a cash discount, the aa could earn a profit of Rs.56,00,000/- on this transaction. It was also a fact on record that the assessee has submitted before the revenue authorities that the upfront down payment received has been utilized in purchase of materials used in work-in-progress. Further, the revenue has alleged that the assessee has not made any efforts to mobilize funds from banks and the assessee has also failed to use the land of 10 acres as collateral for

which the assessee submitted that since the land has been purchased out of the funds of the parties or by taking advances from the market and hence the lands are not free but encumbered. Hence, the possibility of getting loan from the financial institutions is meager and lean. The entire transaction is sale cum finance arrangement wherein the three parties who have booked the 12 flats in advance have been benefited by Rs.1,75,00,000/- of investment profit and also the assessee has benefited by Rs.56,00,000/- of business profit. Hence, the decision of the Id. CIT(A) cannot be supported as the disallowance of these amounts cannot be upheld either in this year (assessee has not claimed) nor in the future years. The expense is held to be an eligible business expenditure as per the provisions of Section 37(1) of the Income Tax Act, 1961.

22. Hence, the appeal of the assessee is allowed and that of the Revenue is liable to be dismissed on this ground.

Order Pronounced in the Open Court on 09/08/2023.

Sd/-

(C. M. Garg)
Judicial Member

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

Dated: 09/08/2023

Subodh Kumar, Sr. PS

Copy forwarded to:

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

ASSISTANT REGISTRAR