

**आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**INDORE BENCH, INDORE**  
**BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER**  
**AND**  
**SHRI B.M. BIYANI, ACCOUNTANT MEMBER**

**ITA No. 1515/Ind/2016**  
**Assessment Year:2012-13**

M/s. Mars Colonizers Pvt. Ltd., Hotel Amit Regency, Sai Baba Complex, Moti Bagh Chowk, Raipur (Assessee /Appellant)	<b><u>बनाम/</u></b> Vs.	DCIT(Central)-1, Bhopal  (Revenue / Respondent)
<b>PAN: AAFCA6847B</b>		
Assessee by	Shri Yash Kukreja, CA, Shri Hitesh Chimnani, CA	
Revenue by	Shri P.K. Mishra, CIT DR	
Date of Hearing	09.08.2023	
Date of Pronouncement	16.08.2023	

**आदेश / O R D E R**

**Per B.M. Biyani, A.M.:**

Feeling aggrieved by appeal-order dated 21.10.2016 passed by learned Commissioner of Income-Tax (Appeals)-3, Bhopal ["Ld. CIT(A)"], which in turn arises out of assessment-order dated 10.03.2015 passed by learned Dy. CIT, Central-1, Bhopal ["Ld. AO"] u/s 143(3) of Income-tax Act, 1961 ["the Act"] for Assessment-Year ["AY"] 2012-13, the assessee has filed this appeal on following effective ground:

*"That the Ld. CIT(A) has erred in law as well as on facts, in sustaining the addition of Rs. 3,78,946/- on the count of unexplained advances from customers u/s 68 of the Income-tax Act, 1961."*

2. Heard the learned Representatives of both sides at length and case-records perused.

3. Brief facts leading to present appeal are such that the assessee is a company engaged in the business of construction and colonizers. The return of income of relevant assessment year was filed declaring a total income of Rs. 62,57,220/-. The case was selected under scrutiny and the AO made assessment u/s 143(3) after making certain additions. One of the additions made by the AO was of Rs. 52,40,362/- u/s 68 on account of unexplained advances received from customers towards booking of plots. The assessee contested addition in first-appeal whereupon the CIT(A) deleted addition substantially to the extent of Rs. 48,61,416/- but, however, upheld a small addition of Rs. 3,78,946/- received from Shri Praveen Kumar Sharma by observing thus in Para No. 14 of appeal-order:

*"Third advance from the NRI is however not supported by even agreement to sale. What happened to that advance, whether any allotment was made or not is also not clear. It also appears that the same person has other transactions from other entities in the group. The confirmation submitted by the appellant is not signed also and there is no PAN number on the confirmation. As a result the addition of Rs. 3,78,946/- is confirmed. The remaining addition out of the total addition of Rs. 52,40,362/- i.e. Rs. 48,61,416/- is therefore deleted."*

4. Aggrieved by order of CIT(A) to the extent of sustaining addition of Rs. 3,78,946/-, the assessee has come in this appeal before us.

5. The assessee has filed an application dated 08.08.2023 under Rule 29 of ITAT Rules, 1963 and prayed to admit and consider following additional evidences filed in Paper-Book:

- (i) Booking letter of Plots
- (ii) Written-request for cancellation of booking
- (iii) Copy of bank statement of Shri Amit Ahuja, director of assessee-company from which the entire amount received from Shri Praveen Kumar Sharma was refunded.

6. Ld. AR for the assessee carried us to Page No. 21 of CIT(A)'s order and demonstrated that before CIT(A), the assessee demanded some time to submit evidences but ultimately could not file the same because Shri Praveen Kumar Sharma was NRI residing in USA. However, the assessee has now submitted these documents by way of additional evidences which can be validly admitted in terms of Rule 29 of ITAT Rules, 1963. He further submitted that the controversy in present appeal involves a small sum of Rs. 3,78,946/-, hence it may be adjudicated by the Bench itself having regard to additional documents so that the litigation comes to end. Ld. DR for the revenue did not object to these submissions of assessee. Therefore, finding merit in the submission of Ld. AR, we are taking additional evidences on record and also considering the same while deciding the controversy in subsequent discussions.

7. On merits of the issue, Ld. AR submitted that Shri Praveen Kumar Sharma was a non-resident and residing in U.S.A. There was a booking of Plot No. 206 and 207 in joint names of two parties, namely (i) Shri Praveen Kumar Sharma, and (ii) Shri Charlie Singh which is evidenced by booking-letter placed at Page Nos. 1 & 2 of Paper-Book. Para No. 4 of the booking-letter also contains "payment plan" tailored between assessee and those two parties. The "payment plan" clearly mentions the date-wise details of payment to be made by both parties. Referring to same, Ld. AR pointed out that the parties were required to pay a sum of Rs. 4,963 + 1,20,942 + 2,53,068 on 17.03.2012, 28.03.2012 and 30.03.2012 falling within the previous year 2011-12 relevant to AY 2012-13 under consideration and rest of the payments were to be made in subsequent financial years. Accordingly, the parties made a total payment of Rs. 4,936 + 1,20,942 + 2,53,068, aggregating to Rs. 3,78,946/- upto 30.03.2012. Thereafter, in next year, the parties made further payments to assessee. This way, the total payment made by Mr. Praveen Kumar Sharma was Rs. 10,08,158/- and made by Mr. Charlie Singh was Rs. 15,38,177/-; both aggregate to Rs. 25,46,335/-. Subsequently, those parties requested for cancellation of booking since they

were unable to make remaining payments and they needed funds for personal purposes. A copy of the written request dated 10.10.2014 filed by parties is placed at Page 3 of Paper-Book. Acting upon their request, their moneys were refunded back on 17.10.2014 from ICICI Bank A/c of Mr. Amit Ahuja, director of assessee-company, copy of bank-statement is filed at Page No. 4 to 5 of Paper-Book. The repayment was made by way of transfer in foreign exchange and the assessee incurred cost on remittance of funds also, which is evident from bank statement and copies of ledger accounts filed in Paper-Book. Ld. AR submitted that the lower authorities have made/confirmed addition for want of evidences but since the evidences now filed clearly establish that the assessee has not only received the sum of Rs. 3,78,946/- but also made a refund of Rs. 25,46,335/- in subsequent year (inclusive of the impugned sum of Rs. 3,78,946/-), there remains no doubt on the genuineness of advance received by assessee. On a proposal to remand this case back to AO, Ld. AR made a very humble request that the amount involved is very small and all evidences are already produced by assessee; therefore the issue should be finally adjudicated at this stage itself and the addition made by lower authorities be deleted. Ld. DR for the revenue left the matter to the wisdom of Bench while acknowledging that the issue involved is very small.

8. We have considered submissions of both the sides and perused the orders of lower authorities as well as the evidences filed by the assessee before us. After a careful consideration, there appears merit in the submission of Ld. AR that the assessee has received advance of Rs. 3,78,946/- towards booking of plot from Shri Praveen Kumar Sharma and Shri Charlie Singh. In fact, Ld. AR has also showed that the assessee received further sums in subsequent financial year as well. That apart, the whole money (including the impugned sum of Rs. 3,78,946/-) was refunded through banking channel via bank a/c of director of assessee-company. The evidences placed by assessee in terms of Rule 29 to demonstrate these factual aspects are taken as authentic evidences and relying upon the same

and having considered the explanations made by Ld. AR, we are inclined to accept that the advance received by assessee is proved appropriately and, therefore, addition made by AO deserves to be deleted. Hence, we delete the addition. The assessee succeeds in this appeal.

**9. Resultantly, this appeal is allowed.**

*Order pronounced in the open court on 16.08.2023.*

Sd/-  
(VIJAY PAL RAO)  
JUDICIAL MEMBER

sd/-  
(B.M. BIYANI)  
ACCOUNTANT MEMBER

**Indore**

**दिनांक /Dated : 16.08.2023.**

CPU/Sr. PS

*Copies to: (1) The appellant  
(2) The respondent  
(3) CIT  
(4) CIT(A)  
(5) Departmental Representative  
(6) Guard File*

*By order*

*Assistant Registrar  
Income Tax Appellate Tribunal  
Indore Bench, Indore*