

IN THE INCOME TAX APPELLATE TRIBUNAL DELHI

(DELHI BENCH 'B' : NEW DELHI)

BEFORE SH. N.K.BILLAIYA, ACCOUNTANT MEMBER

AND

SH. ANUBHAV SHARMA, JUDICIAL MEMBER

ITA No. 3240/Del/2019

(Assessment Year : 2014-15)

Uninav Developers Pvt. Ltd. 1 st Floor, Plot No. 330, Patparganj F.I.E., Delhi-92 PAN : AAPCS6124B	Vs.	Asstt. Commissioner of Income Tax, Circle-27(1), New Delhi
(APPELLANT)		(RESPONDENT)

ITA No. 3248/Del/2019

(Assessment Year : 2014-15)

Asstt. Commissioner of Income Tax, Circle-27(1), New Delhi	Vs.	Uninav Developers Pvt. Ltd. 1 st Floor, Plot No. 330, Patparganj F.I.E., Delhi-92 PAN : AAPCS6124B
(APPELLANT)		(RESPONDENT)

Appellant by	Sh. V.K.Tulsiyan, CA
Revenue by	Sh. Vivek Kumar Upadhyay, Sr. DR

Date of hearing:	18.07.2023
Date of Pronouncement:	06.09.2023

ORDER**PER ANUBHAV SHARMA, JM:**

The appeal has been preferred by the Assessee and Revenue against the order dated 31.01.2019 of CIT(A)-9, New Delhi (hereinafter referred as Ld. First Appellate Authority or in short Ld. 'FAA') in Appeal No. 385/2016-17 arising out of an appeal before it against the order dated 30.12.2017 passed u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred as 'the Act') by the ACIT, Circle 27(1), New Delhi (hereinafter referred as the Ld. AO).

2. The facts in brief are that the assessee filed a return of income declaring total loss of Rs. 2,26,59,765/- while being engaged in the business of property development. Ld. AO had made disallowances which were challenged by the assessee before Ld. CIT(A) where the appeal was partly allowed for which the assessee is in appeal raising following grounds ;

“1. That the Appellant prays that the order passed by Ld. Assessing Officer is bad in law as well as facts of the case.

2. That the Appellant prays that the assessment proceedings were void, illegal and against the principles of natural justice.

3. That on the facts & circumstances of the case, appellant prays that Ld. CIT (A) erred in not discussing the addition of Commission Expenses of Rs. 2,64,015 and Interest paid of Rs. 18,66,026/- while discussing the particular ground of disallowance of expenses under wrong assumption.

4. That on the facts & circumstances of the case, appellant prays that Ld. CIT (A) erred in confirming the addition of Repair & Maintenance Expenses without any cogent material.

5. That on the facts & circumstances of the case, appellant prays that Ld. CIT (A) erred in confirming the addition of unsecured loan amounting to Rs. 34,00,000 without having any cogent evidence.

6. *That on the facts & circumstances of the case, appellant prays that Ld. CIT (A) erred in confirming the addition of sundry creditor of Rs. 5,24,528/- without any cogent evidence.*

7. *That on the facts & circumstances of the case, appellant prays that Ld. CIT (A) erred in confirming the addition of sundry creditor of Rs. 3,32,454/- without any cogent evidence.*

8. *That the Appellant craves leave to add, amend, modify or delete any grounds of appeal.”*

2.1 The Revenue is in appeal raising following grounds ;

"1. Whether on facts and in the circumstances of the case and in law, the Ld. CIT(A) is justified in deleting addition of Rs. 93,24,051/-made by the Assessing Officer on account of disallowance of commission paid"

2. Whether, on facts and in the circumstances of the case and in law, the Ld. CIT(A) is justified in deleting the addition of Rs. 5,74,20,762/- out of total disallowance of Rs. 6,08,20,762/- made u/s 68 of the Income Tax Act, 1961 by admitting the additional evidences without appreciating that no details were submitted by the assessee during the assessment proceedings in respect of these credits and the admission of additional evidences was objected by the AO in his remand report."

3. The appellant craves, leave or reserving the right to amend, modify, alter, add or forego any ground(s) of appeal at any time before or during the hearing of the appeal.”

3. Heard and perused the record and ground wise findings are as follows :-

4. Ground no. 1 and 2, in, ITA No. 3440/Del/2019 are general in nature and shall follow the consequences on merits.

Ground no. 3 in ITA No. 3440/Del/2019 & ground no 1 in ITA No. 3248/Del/2019.

5. Grounds are connected so as to be taken up together for determination. It can be appreciated from the order of Ld. CIT(A) that in para 5.3 he has benefited the assessee with regard to deletion of commission expenses which have been challenged by the Revenue in the appeal while assessee in its ground has raised the issue of non-determination of the two additions of Rs. 2,64,015/- qua the interest paid to the customers and Rs. 18,66,026/- being business promotion expenses.

5.1 Ld. AO has disallowed the same on the basis that as assessee is accounting income on project completion method there being no Revenue of the assessee thus, expenses are not allowable. Ld. CIT(A) has taken into consideration the Accounting Standard 7 (construction contracts) which provide that these expenses are allowable. Ld. DR has although relied the order of Ld. AO but was unable to controvert the fact that as per Section 145 of the Act the assessee is required to adopt Accounting Standards for accounting and the disputed expenses are of the nature which cannot be attributed to a single transaction. Accounting standard relied by Ld. CIT(A) categorically deal with the nature of disputed expenses and the same are allowable.

5.2 It appears that Ld. CIT(A) has although taken into consideration all the three disallowances for discussion but while giving conclusion mentioned of deletion of commission expenses only. Thus, ground raised by Revenue has no substance and the ground raised by assessee is allowed, the impugned additions challenged in ground no. 3, by the assessee also stand deleted.

Ground no. 4 in ITA No. 3440/Del/2019

6. The issue arises out of the confirmation of the addition of repair and maintenance expenses by the Ld. CIT(A). The Ld. AO had submitted the

remand report on the additional evidence filed by the assessee before Id. CIT(A) claiming that total expenditure of the assessee company was Rs. 2.68 crores details of which were submitted to Id. AO however, ledger account of repair and maintenance was mistakenly left to be submitted. Ld. CIT(A) has not taken into cognizance the additional evidence inspite of calling the remand report.

7. The Bench is of considered opinion that assessee had given a reasonable explanation to have mistakenly left out the ledger account of the repair and maintenance, which formed only 2% of the total expenditure, of which evidences were filed and which the Ld. AO had examined. The ends of justice required allowing this evidence. Accordingly, the issue is restored on merits to the files of Id. CIT(A) which after taking into consideration the additional evidences give a finding on the merits. Ground is allowed for statistical purposes

Ground no. 5 in ITA No. 3440/Del/2019 & ground no 2 in in ITA No. 3248/Del/2019.

8. The issue arises out of confirmation of the addition of unsecured loan amount of Rs. 34 lakhs which Ld. CIT(A) has upheld on the basis that qua the loan given by Priya Garg the source of source was not established. The Revenue has challenged the deletion of Rs. Rs. 5,74,20,762/- out of total disallowance of Rs. 6,08,20,762/- made u/s 68 of the Act by the Ld. AO.

8.1 It can be appreciated from the order of Id. CIT(A) that assessee had filed additional evidences in regard to source of the loans for which Ld. AO was also given opportunity and having taken into consideration the evidence which established identity, genuineness and creditworthiness of the source of

funds the Ld. CIT(A) had deleted the addition while before us Ld. DR has not cited anything to show that the evidences were insufficient for otherwise not reliable.

8.2 In regard to additions made on account of transaction under taken by Priya Garg an additional evidence application has been filed before us, wherein the PAN and Aadhar of Kalpana B. Shah. Her affidavit confirming the loan granting Priya Garg along with confirmation and the bank statement of Kalpana B. Shah for the year, 2020 evidencing in the loan repayment by Priya Garg to Kalpana B. Shah have been filed. The order of Id. CIT(A) shows he had sustained this part of the addition only on the basis of lack of evidence for which it is submitted that at the relevant time Priya Garg was not able to communicate with Kalpana B. Shah. Thus, as with regard to the ground raised by Revenue there is no substance however while allowing the additional evidence filed before us, the ground no. 5 raised by the assessee deserves to be allowed for statistical purposes. Issue is restored to files of Ld.CIT(A) and who after taking into consideration the additional evidences, decided the issue afresh on merits.

Ground no. 6 ITA No. 3440/Del/2019

9. The issue arises out of confirmation of the addition of sundry creditors of Rs. 5,24,528/-. Ld. CIT (A) has not admitted the additional evidence in the form of confirmation filed by the assessee. Order of Ld. CIT(A) shows that evidences were sent to Ld. AO who had submitted remand reports on two occasions on 16.07.2018 and 10.08.2018 making submissions on the merits. We are of considered view that having once sought the remand report of Ld. AO and giving due opportunity to rebut on merits, the assessee's additional

evidence deserved to be considered. Accordingly, the ground is allowed for statistical purposes. Ld. CIT(A) is directed to take the additional evidence of assessee in consideration to decide the issue afresh.

Ground no. 7 No. 3440/Del/2019

10. Issue arises out of the confirmation of addition of sundry creditors of Rs. 3,32,454/-. Ld. CIT(A) was provided all the details. Ld. AR had claimed of filing all the evidences before Ld. AO which AO denied. In such a case it is more rational to accept the plea of assessee and call for the remand report instead of declining to decide on merits and confirming the additions. Ground is allowed for statistical purposes and the issue is restored to the files of Ld. CIT(A) to decide afresh after allowing the additional evidences.

11. **The appeal of assessee is allowed partly and that of Revenue is dismissed.**

Order pronounced in the open court on 06th September, 2023.

Sd/-

(N.K.BILLAIYA)

ACCOUNTANT MEMBER

Date:- 06 .09.2023

Binita, SR.P.S

Copy forwarded to:

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

Sd/-

(ANUBHAV SHARMA)

JUDICIAL MEMBER

AR, ITAT
New Delhi