

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH :H: DELHI)**

**BEFORE SHRI SAKTIJIT DEY, VICE-PRESIDENT &
DR. B.R.R. KUMAR, ACCOUNTANT MEMBER**

**ITA No. 5487/Del/2019
Assessment Year: 2013-14**

ITO, Ward-25(3), New Delhi (PAN:AACCT1772B)	Vs.	Time Bound Contracts Pvt. Ltd., Parsavnath Metro Power, Near Shahdara Metro Station, Delhi-1100 32
(Appellant)		(Respondent)

Present for:

Department by : Ms. Sapna Bhatia, CIT - DR
Assessee by : Shri Rajat Jain & Akshat Jain, CAs

Date of Hearing : 12.10.2023
Date of Pronouncement : 25.10.2023

ORDER

PER SAKTIJIT DEY, VICE PRESIDENT:

This is an appeal by the Revenue against order dated 10.04.2019 of learned Commissioner of Income-Tax (Appeals) -23, New Delhi pertaining to assessment years 2013-14. The effective grounds raised by the Revenue are as under:

1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in restricting the addition of Rs.58,78,13,030/- to Rs.78,510/- made by the A.O on account of deemed profit on transfer of WIP (i.e. land measuring 47.01 bigha to Parvnath Developers Ltd. without considering the fact

that the assessee company is the only registered owner of the land which has been sold during the year and as per the statutory provisions of law, it is only the assessee company which is liable to show the said transaction in its books of accounts and compute the tax liability accordingly. Merely by entering into the private arrangement by virtue of agreement, substantive provisions of law cannot be forfeited.

2. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs.16,10,237/- regarding sale of land measuring 370 sq. yd. on the basis that M/s. Parsvnath Developers Ltd. has real rights on the land, whereas, M/s. Time Bound Contracts Ltd. is only the register owner of the land.

2. In so far as ground no.1 is concerned, briefly, the facts are, the assessee is a resident corporate entity stated to be engaged in the business of purchase of land, immovable property and to undertake development and construction of real estate projects. For the assessment year under dispute, assessee filed its return of income on 30.09.2013 declaring loss of Rs.51,287.

3. In course of assessment proceedings, while examining the audited financial statement of the assessee, the Assessing Officer noted that assessee has not offered any revenue from business operation. He further observed that the opening Work in Progress (WIP) amounting to

Rs.1,46,43,770 as on 01.04.2012 has been shown as transfer to developer company and WIP as on 30.01.2013 has been shown as nil. He further observed that no development expenses have been incurred on in the year. Therefore, he called upon the assessee to furnish complete inventory/change in the inventory and also to provide the details of transfer and change in inventory along with documentary evidence. As observed by the Assessing Officer, though, the assessee furnished written submissions on 23.11.2015, however, he did not furnish any reply with regard to change in inventory and details of transfer of inventory. He even did not furnish any registered deed. The Assessing Officer has further observed that, though, the detail of work in progress was called for, however, complete break up and documentary evidence with regard to WIP has to be furnished. He also called upon the assessee to furnish copy of deeds and detail of the property transferred under the direction of the developer.

4. In response to the query raised, the assessee furnished its reply. On perusing the reply of the assessee, the Assessing Officer observed that the assessee has stated that all the rights relating to the land such as

development, marketing and sales has been given to M/s. Parsvnath Developers Ltd. and the assessee has received the advances of Rs.1,50,00,000 against sale of land in earlier years. After verifying the details furnished by the assessee including various agreements, the Assessing Officer observed that assessee's claim that all rights relating to development, marketing and sale of land belong to M/s. Parsvnath Developers Ltd. is untenable. He further rejected assessee's claim that it is a landholding company of the subject land and for the sale of property to various customers by the developer company, the assessee has to execute sale deed as per the transaction of the developer company. He observed that assessee's contention that it has not made any sale/purchase of immovable property in its own capacity is not correct as the assessee is legal and beneficial owner as well as in possession of the land. He further observed, in assessment year 2013-14, there was a complete change in the shareholding pattern of the assessee, which indicates that M/s. Parsavnath Associated Pvt. Ltd. is managing the whole and full control of the affairs of the company and M/s. Parsvnath Developers Ltd. is a related party and the assessee has a transaction by way of transfer of land. He further alleged that assessee has not

complied with the requirements of AS-18 prescribed by Institute of Chartered Accountants of India with regard to related period disclosure. He observed that according to the inventory of WIP, subject land was measuring 44 bighas 61 biswas. He observed that Parsvnath Associated Private Ltd. is holding 50% share in the assessee company and controlling the affairs of the assessee. Thus, he held that transfer of stock of land aggregating the 44 bighas 61 biswa to M/s. Parsavnath Developers Ltd. was for Rs.1,46,43,770, whereas, as per the copy of sale deed received from Sub-Registrar, Jodhpur, the market price for which the sale of land at similar price was carried out by the assessee for a plot measuring 370 sq. yds. comes to Rs.4460 per sq. yd. Thus, he observed that the total cost of land as per fair market value works out to Rs.60,24,56,800. Therefore, after reducing the cost of land at Rs.46,43,770, he added an amount of Rs.58,78,13,030.

5. Assessee contested the aforesaid addition before learned First Appellate Authority. After considering the submission of the assessee, in the context of facts and material on record, learned Commissioner (Appeals) found that the allegation of the Assessing Officer that the

assessee is a real owner of the land and not M/s. Parsvnath Developers Ltd., was considered by the learned First Appellate Authority while deciding the appeals in assessee's case in assessment years 2006-07, 2009-10, 2010-11 and 2012-13, wherein, it was held by him that the real owner of the land is M/s. Parsvnath Developers Ltd. and not the assessee. Thus, it was held that the income from sale of land would not accrue to the assessee. It was further found that the income arising from sale of land has been accounted for in the books of account of M/s. Parsavnath Developers Ltd. and offered to tax. Thus, relying upon the decision taken by learned the First Appellate Authority in the preceding assessment years, he held that income from sale of land cannot be attributed as income of the assessee. Accordingly, while deleting the major part of addition, learned First Appellate Authority sustained the addition of Rs.78,510.

6. Being aggrieved with the aforesaid decision of learned First Appellate Authority, Revenue is before us.

7. At the outset, learned counsel appearing for the assessee submitted that the issue is squarely covered in favour of the assessee by the

decision of the Tribunal in its own case in assessment years 2006-07 and 2012-13. In this context, he furnished before the Bench, order dated 26.11.2021 passed in ITA Nos.3906 & 3907/Del/2017.

8. Learned Departmental Representative, though, fairly agreed that the issue is squarely covered by the decision of the Tribunal, however, he relied upon the observations of the Assessing Officer.

9. Having considered rival submissions, we find that while deciding identical issue in assessee's own case in assessment year 2012-13 in the order referred to above, the Tribunal has upheld the deletion of similar addition with the following observations:

"7. On further appeal, the Ld. CIT(A) has deleted the addition observing as under:

"5. The above written submissions have been carefully considered. Grounds of appeal nos. 1 to 3, all pertain to the addition of Rs. 1,87,19,545/- on account of estimated profit on sale of plots of land. It is submitted that the addition has been made on the basis of AIR information, without considering the fact that the sales had been made and profit had been booked by M/s Parsvnath Developers Ltd. It is further argued that the addition of Rs. 1,87,19,545/- has been made in respect of sale of 14 plots of land of a total area of 3600 sq. yards, without considering that these plots are part of the same 47.01 bighas of land, whose sale to M/s Parsvnath Developers Ltd., has been brought to tax in the order u/s 153C for the AY 2006-07, passed on the same date.

5.1. *The appellant has contended that the addition has been made in respect of developed plots sold by M/s Parsvnath Developers Ltd., in which sales the appellant is a confirming party. The AR of the appellant has stated that the appellant is an associated company of M/s Parsvnath Developers Limited and an agreement to sell dated 02.09.2005 was executed between the appellant and M/s Parsvnath Developers Limited. As per the said agreement to sell, the appellant company represented that it had made arrangement to acquire about 120 - 150 bighas of contiguous land at Dhinana, District Jodhpur, Rajasthan from various landowners / sellers. However, the said agreement did not materialize as the appellant company failed to acquire rights to the entire contiguous land, as well as conversion and clearance permissions. The AR of the appellant has submitted that the appellant purchased land admeasuring 47.01 bighas only, for an amount of Rs 1,46,43,770/-, which was duly recorded in its books of account for the AY 2006-07. The appellant has furnished copy of the sale deeds in favour of the appellant along with details of land owners / farmers from whom such land of 47.01 bighas was purchased in the FY 2005-06 relevant to the AY 2006-07. But the land was held on behalf of M/s Parsvnath Developers Ltd., and no sale of land had been made by the appellant during the years since then, or in the year presently under consideration. The said land has continuously been shown as work in progress in the books of the appellant up until the AY 2012- 13. The appellant has affirmed that besides the said land admeasuring 47.01 bighas, it has not purchased any other land, and also has not sold any land. The AIR information that has been received in respect of purchase and sale of land made in district Jodhpur, Rajasthan, for assessment year 2012-13 pertains to sale of plots by M/s Parsvnath Developers Ltd.*

5.2. *The AR has submitted that the appellant had entered into an agreement with M/s Parsvnath Developers Limited on 01.09.2006, as per which, M/s Parsvnath Developers Limited was to make an advance to the appellant company to purchase, or arrange to purchase land in village Banshi, Jodhpur. The appellant had accordingly purchased 47.01 bighas of land on behalf of M/s Parsvnath Developers Limited. The appellant, even though it was the*

registered owner" of the said land which was shown as stock in trade in its books of accounts, it was M/s Parsvnath Developers Ltd. which held all the rights to the said land, such as development, marketing and sale.

5.3. Moreover, it has been pointed out that the AO has made addition on account of alleged sale of 107.15 bighas, including the 47.01 bighas, to M/s Parsvnath Developers Ltd. in the AY 2006-07. The AO has again made addition on account of purchase of part of the land admeasuring 47.01 bighas in the AY 2009- 10, and on account of sale of the developed plots which are part of the same land in the AYs 2010-11 and 2012-13, on the basis of the years of registration of the plots on sale to the eventual buyers. The AO has yet again, in the AY 2013-14, made addition of estimated profit on transfer of the land of 47.01 bighas shown till then as WIP, from the appellant to M/s Parasvnath Developers Ltd., to give effect of sales made by the developer company in earlier years. Therefore, the additions made by the AO of estimated profit on sale of the same land admeasuring 47.01 bighas in the span of the assessment years 2006-07 to 2013- 14 has led to triple taxation in the hands of the appellant.

5.4. In order to verify these contentions, the appellant was required to furnish a detailed chart in terms of the years of purchase of the land and sale of plots in the hands of M/s Parsvnath Developers Ltd. In response, the appellant vide its letter dated 21.02.2017 filed u/s 250(4) of the Act, furnished the details of sale of plots from AYs 2006-07 to 2012-13 in the books of M/s Parsvnath Developers Limited, out of the said parcel of land of 47.01 bighas which was acquired by the appellant and was the subject of the development agreement with M/s Parsvnath Developers Ltd. The total saleable land out of 47.01 bighas, after plotting and development, has been disclosed at 50,875 sq. yards. M/s. Parsvnath Developers Ltd. is shown to have sold till date, 175 plots of 200-400 sq. yards, 23 villas on plots of 200-300 sq. yards, and 16 flats with share of land of 67 sq. yards. 4,151 sq. yards of land remains unsold, apart from common areas. In the case of the appellant, the situation is as below:-

AY	As per appellant				
	Purchase/Sale/adjustment/transfer	CL WIP	Purchase	Sale	CL WIP
06-07	1,46,43,770 47.01 bigha (i.e. 44 bigha and 61 biswa) however, development rights have been transferred to the developer company	47.01 bigha	1,46,43,770 47.01 bigha 3,03,71,900 60.15 bigha Total land alleged to be purchased 107.15 bigha	107.15 bigha bigha on which profit of Rs 17,04,84,330/- calculated and addition was made	
07-08		47.01 bigha			
08-09		47.01 bigha			
09-10		47.01 bigha	31,06,700/- Purchase of 4700 sq. yds.		31,06,700/- 4700 sq. yds.
10-11		47.01 bigha		58,27,311/- 1100 sq. yds	3600 sq. yds.
11-12		47.01 bigha			3600 sq. yds.
12-13		47.01 bigha		1,87,19,545/- 3600 sq. yds.	
13-14	Trfr to PDL 1,46,43,770 47.01 bigha			58,78,13,030 Deemed profit on transfer of 47.01 bigha land held as WIP on 01.04.2012 16,10,237/- 370 sq yards	(47.01) bigha

5.5. The appellant has reiterated that it has not sold any part of the land admeasuring 47.01 bighas which continued to be shown as WIP in the books of the appellant till the AY 2012-13. The AO has evidently failed to bring on record any evidence in support of his contention that the appellant had actually sold land of 3600 sq. yards and received the consideration of Rs. 1,90,90,345/-. Further, the AO has again made addition in the Assessment Year 2013-14 as

mentioned above by considering the said land of 47.01 bighas as the stock held by the appellant. On the other hand, M/s Parsvnath Developers Ltd. has [confirmed that these sales are reflected in its books of account. In view of all the above facts, I find no material basis for the estimated addition of Rs. 1,87,19,545/- made by the AO. The appellant therefore succeeds at grounds of appeal nos. 1 to 3.”

10. There being no material difference in the factual position, respectfully following the decision of the Co-ordinate Bench, we uphold the order of learned Commissioner (Appeals) on the issue. As regards the issue raised in ground no.2, this being corollary to ground no.1, does not require any separate adjudication. Accordingly, both the grounds are dismissed.

10. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced in the open court on 25 .10.2023.

Sd/-

**(DR. BRR KUMAR)
ACCOUNTANT MEMBER**

Sd/-

**(SAKTIJIT DEY)
VICE-PRESIDENT**

**Dated: 25th October, 2023
Mohan Lal**

Copy forwarded to:

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

Asst. Registrar, ITAT, New Delhi