

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES : A : NEW DELHI

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER

ITA No.2622/Del/2014
Assessment Year: 2011-12

DCIT,
Central Circle-7,
New Delhi.

Vs Aims Max Gardenia Developers
Pvt. Ltd.,
R-19, 3rd Floor,
Vikas Marg, Laxmi Nagar,
Delhi.

PAN: AAICA4047Q

(Appellant)

(Respondent)

Assessee by	:	None
Revenue by	:	Shri Zafarul Haque Tanweer, CIT, DR
Date of Hearing	:	17.10.2023
Date of Pronouncement	:	31.10.2023

ORDER

PER KUL BHARAT, JM:

This appeal by the Revenue pertaining to Assessment Year 2011-12 is directed against the order of the Id.CIT(A)-1, New Delhi, dated 17th February, 2014.

The Revenue has raised the following grounds of appeal:-

- "1. The order of Ld. CIT(A) is not correct in law and facts.*
- 2. On the facts and circumstances of the case the Id.CIT(A) has erred in addition of Rs.26,01,100/- made by AO u/s 69A of the I.T. Act.*

3. *On the facts and circumstances of the case the Id.CIT(A) has erred in deleting the addition of Rs.13,09,33,749/- made by AO on account of "unexplained expenditure."*

4. *On the facts and circumstances of the case the Id.CIT(A) has erred in deleting the addition of Rs.3,00,00,000/- made by AO on account of unexplained investment.*

5. *On the facts and circumstances of the case the Id.CIT(A) has erred in directing the AO to cancel the reduction in closing work-in-progress on account of bogus purchases of Rs.50,00,000/-.*

6. *The appellant craves leave to add, amend any/all the grounds of appeal before or during the course of hearing of the appeal."*

2. The Tribunal had recalled its order on the basis of the Miscellaneous Application filed by the Revenue to adjudicate grounds No.3, 4 and 5. The facts relating to these grounds are that the assessee is a company duly incorporated under the Companies Act on 29.09.2009 and is engaged in the business of building, construction and development of residential/commercial projects. A search and seizure operation u/s 132 of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') was carried out in Gardenia Group of cases on 19th April, 2010. The case of the assessee was centralized. Thereafter, the AO proceeded to frame assessment and after considering the material available on record, made various additions, namely, on account of cash receipts from suppliers seized during the search of Rs.3 crore; on account of cash advances to suppliers amounting to Rs.13,09,33,749/-; and on account of cash receipt from buyers/customers of Rs.26,01,000/-. The AO in respect of bogus purchases, made addition of Rs.50 lakh. Thus, the AO assessed total taxable income at Rs.16,42,62,299/-. Aggrieved against this, the assessee preferred appeal before the Id.CIT(A) who partly allowed the appeal by deleting the

additions amounting to Rs.3 crore, Rs.13,09,33,749/-, Rs.50 lakh and Rs.26,01,000/-.

3. Aggrieved against this, the Revenue has preferred appeal before the Tribunal.

4. At the time of hearing, no one attended the proceedings on behalf of the assessee. It is seen from the record that no one has been attending the proceedings despite various opportunities. The notices sent by the Registry have been returned with the remarks "Left." Under these facts, the appeal is taken up for hearing in the absence of the assessee and is being decided on the basis of material available on record.

5. Ground No.3 of the Revenue's appeal is against deletion of addition of Rs.13,09,33,749/- made by the AO on account of unexplained expenditure. The Id. Departmental Representative vehemently argued that the Id.CIT(A) was not justified in deleting the addition. The Id. DR submitted that the Id.CIT(A) did not provide adequate opportunity to the AO for rebutting the submissions made by the assessee. Therefore, he submitted that the issue may be restored to the Id.CIT(A) for deciding the same afresh, after giving adequate opportunity of hearing to the assessing authority.

6. We have heard the Id. DR. We find that the Id.CIT(A) has decided the issue wholly on the basis of the submissions made by the assessee and without confronting the same to the AO. Therefore, to subserve the interest of principle of natural justice, the impugned order on this ground is hereby set aside and this

ground is restored to the file of the Id.CIT(A) for deciding the issue afresh after giving adequate opportunity to the assessee to rebut the submissions made by the assessee. The ground No.3 raised by the Revenue is allowed for statistical purposes.

7. Ground No.4 of the Revenue's appeal is against deletion of addition of Rs.3 crore made by the AO on account of unexplained investment. The Id. Departmental Representative vehemently argued that the Id.CIT(A) was not justified in deleting the addition. The Id. DR submitted that the Id.CIT(A) did not provide adequate opportunity to the AO for rebutting the submissions made by the assessee. Therefore, he submitted that the issue may be restored to the Id.CIT(A) for deciding the same afresh, after giving adequate opportunity of hearing to the assessing authority.

8. We have heard the Id. DR. We find that the Id.CIT(A) has decided the issue wholly on the basis of the submissions made by the assessee and without confronting the same to the AO. Therefore, to subserve the interest of principle of natural justice, the impugned order on this ground is hereby set aside and this ground is restored to the file of the Id.CIT(A) for deciding the issue afresh after giving adequate opportunity to the assessee to rebut the submissions made by the assessee. The ground No.4 raised by the Revenue is allowed for statistical purposes.

9. Ground No.5 of the Revenue's appeal is against directing the AO to cancel the reduction in closing work-in-progress on account of bogus purchases of Rs.50 lakh. The Id. Departmental Representative vehemently argued that the Id.CIT(A) was not justified in making the said direction. The Id. DR submitted that the Id.CIT(A) did not provide adequate opportunity to the AO for rebutting the submissions made by the assessee. Therefore, he submitted that the issue may be restored to the Id.CIT(A) for deciding the same afresh, after giving adequate opportunity of hearing to the assessing authority.

10. We have heard the Id. DR. We find that the Id.CIT(A) has decided the issue wholly on the basis of the submissions made by the assessee and without confronting the same to the AO. Therefore, to subserve the interest of principle of natural justice, the impugned order on this ground is hereby set aside and this ground is restored to the file of the Id.CIT(A) for deciding the issue afresh after giving adequate opportunity to the assessee to rebut the submissions made by the assessee. The ground No.5 raised by the Revenue is allowed for statistical purposes.

11. To sum up, the grounds No.3, 4 and 5 are allowed for statistical purposes.

12. In the result, the appeal of the Revenue is allowed for statistical purposes.

Order pronounced in the open court on 31.10.2023.

Sd/-

(M. BALAGANESH)
ACCOUNTANT MEMBER

Sd/-

(KUL BHARAT)
JUDICIAL MEMBER

Dated: 31st October, 2023.

dk

Copy forwarded to :

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

Asstt. Registrar, ITAT, New Delhi