

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

**BEFORE SH. SAKTIJIT DEY, VICE PRESIDENT
AND
SH. N. K. BILLAIYA, ACCOUNTANT MEMBER**

ITA No.1250/Del/2017
Assessment Year: 2007-08

Income Tax Officer Ward- 2 (4) New Delhi	Vs.	M/s. Antriksh Infrastructure Pvt. Ltd. 34/C-8, Sector-8, Rohini, Delhi-110085 PAN No.AAFCA9387A
(APPELLANT)		(RESPONDENT)

Appellant by	Sh. Kanv Bali, Sr. DR
Respondent by	Sh. Ved Jain, Advocate Ms. Supriya Mehta, CA Sh. Aman Garg, CA

Date of hearing:	21/12/2023
Date of Pronouncement:	03/01/2024

ORDER

PER N. K. BILLAIYA, AM:

This appeal by the revenue is preferred against the order of the CIT(A)-1, New Delhi dated 20.12.2016 pertaining to A.Y. 2007-08.

2. The solitary grievance of the revenue is that the CIT(A) erred in deleting the addition of Rs.29201930/- made u/s.68 of the Act.

3. Briefly stated the facts of the case are that the assessee is a private Limited company engaged in the business of Real Estate Development. In furtherance of its objects the assessee received advance of Rs.29201930/- from 34 parties. These amounts were received as booking advances towards booking of residential unit in the project Antriksh Square at Jaipur, Rajasthan.

4. A search and seizure operation was carried out in the case of Antriksh and Dwarkadhish group. Certain documents were found and seized from the residential premises of the Director Rakesh Kumar Yadav pertaining to Antriksh Infrastructure Private Limited for the F.Y. 2006-07.

5. On the basis of information received from the investigation wing the case of the assessee was reopened and accordingly statutory notices u/s. 148 of the Act was issued and served upon the assessee.

6. In the reasons recorded for reopening the assessment it was stated that the advance of Rs.28,00,000/- received by the assessee represent undisclosed income of the assessee.

7. The assessee during the course of the assessment proceedings submitted the copy of the ITR and audited balance sheet and the AO asked the assessee to provided the details of

advance received from the customers of Rs.29201930/-. Assessee filed a detailed reply alongwith proof of income, offer letter, ledger accounts and ID proofs of all the parties to prove the genuineness of advance received.

8. The AO asked the assessee to produce five persons namely Manish, Sh. Swarn, Rampal, Shakti and Vijay Singh for verification. The assessee sought permission to produce other 5 persons and the AO accepted the prayer of the assessee and thereafter assessee produced Chattar Singh, Swarn, Jitender, Bimla and Munni Devi.

9. Their statements were recorded supported by the evidences which were discarded by the AO who completed the assessment by making addition of Rs.29202930/- u/s. 68 of the Act.

10. Aggrieved, the assessee challenged the addition before the CIT(A) and explained that the advance received for the project Antriksh Square was received in demand draft from 34 parties towards booking of residential flats at Jaipur. It was further explained that due to recession and delay in the completion of the project 13 customers issued legal notice to the assessee claiming refund of the booking advance. It was pointed out that Rs.11904264/- has been refunded to 13 parties during F.Y. 2015-16 and 2016-17.

11. After considering the facts and the submissions and after verifying the facts the CIT(A) deleted the addition.

12. Before us the DR strongly supported the findings of the AO and referring to the statements the DR read operative part of the assessment order.

13. The Counsel for the assessee reiterated what has been stated before the FAA.

14. We have given a thoughtful consideration to the orders of the authorities below. It is not in dispute that the assessee has received the advance towards booking of residential flat in project Antriksh Square amounting to Rs.29201930/- from 34 parties. It is also not in dispute out of 34 parties amount has been refunded to 13 parties in F.Y.2015-16 and 2016-17 as under :-

Refund Details of Members FY 2006-07 (A / 7-08)

S.NO	NAME	AMOUNT-2006-07	REFUND (F.Y.15-16)	REFUND(F.Y.16-17)
1	AJIT	600,100.00		600,100.00
2	BHARAT SINGH	573,000.00		573,000.00
3	CHAMPA DEVI	873,000.00		873,000.00
4	CHATTER SINGH	782,000.00	782,000.00	
5	DALBIR SINGH	742,000.00		742,000.00
6	DILBAG SINGH	604,800.00	604,800.00	
7	JITENDER	847,800.00	847,800.00	
8	PRATHVI SINGH	1,068,000.00	1,068,000.00	
9	RAM PHAL	1,504,978.00		1,504,978.00
10	RAMESH KUMAR	929,800.00	929,800.00	
11	SANTRA DEVI	746,450.00	746,450.00	
12	SHAKTI	1,992,015.00	1,992,015.00	
13	SHOKEEN	640,321.00		640,321.00
	G.TOTAL	11,904,264.00	6,970,865.00	4,933,399.00

Total Refund

11,904,264.00

15. This brings down the disputed amount to Rs.17297666/- belonging to 21 parties. We find that the assessee has also submitted affidavits of all the persons who have given advance and in each affidavit the buyers have categorically stated that they have given advances towards booking of flat.

16. Appreciating the factual matrix in true perspective we find that the assessee has filed the details of advances received from customers and the impugned transactions are not loan simplicitor but business transaction has to be considered from that angle. The AO has recorded the statements of only 5 parties out of which amount has been refunded to three parties namely Shakti Singh, Chattar Singh and Jitender.

17. No evidence has been brought on record to show that the assessee has purchased the demand drafts by paying cash to 34 parties. The AO has also not brought any evidence to demolish the affirmations made in the affidavits of the persons who have given advances. It appears that the AO has made the additions on suspicion, conjecture and surmises without any evidence and the CIT(A) has deleted the impugned additions on proper appreciation of facts. We do not find any reason to interfere with the findings of the CIT(A).

18. In the result, the appeal of the revenue is dismissed.

Order pronounced in the open court on 03.01.2024.

Sd/-
(SAKTIJIT DEY)
VICE PRESIDENT

NEHA

Date:- .01.2024

Copy forwarded to:

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

Sd/-
(N. K. BILLAIYA)
ACCOUNTANT MEMBER

ASSISTANT REGISTRAR
ITAT NEW DELHI