

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

**BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND
SHRI YOGESH KUMAR U.S, JUDICIAL MEMBER**

ITA No. 4187/DEL/2018 [A.Y. 2011-12]

**The Dy. C.I.T
Circle - 11(1)
New Delhi**

Vs.

**M/s Hella India Lighting Ltd
K - 61B, LGF, Kalkaji
New Delhi**

PAN - AAACJ 0101 G

**CO No. 80/DEL/2022
[A/o ITA No. 4187/DEL/2018 [A.Y. 2011-12]]**

**M/s Hella India Lighting Ltd
K - 61B, LGF, Kalkaji
New Delhi**

Vs.

**Dy. C.I.T
Circle -11(1)
New Delhi**

PAN - AAACJ 0101 G

(Applicant)

(Respondent)

**Assessee By : Shri Ved Jain, Adv
Ms. Supriya Mehta, CA**

Department By : Shri Waseem Arshad, CIT- DR

Date of Hearing : 04.01.2024

Date of Pronouncement : 08.01.2024

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-

The above captioned appeal by the Revenue and cross objection by the assessee are directed towards the order of the CIT(A) - 4, New Delhi dated 28.03.2018 pertaining to A.Ys. 2011-12.

2. Since the appeal and cross objection were heard together, they are disposed of by this common order for the sake of convenience and brevity.

3. Grievances of the Revenue read as under:

“1. Whether the Id. CIT(A) has not erred on facts and in law in deleting the addition of Rs. 8,75,00,000/- on account of undisclosed income?

2. Whether the Id. CIT(A) has not erred on facts and in law in deleting the addition made on the basis of incrementing documents found during the course of search on buyer?

4. Cross objections are as under:

1. On the facts and circumstances of the case, the order passed by the learned Commissioner of Income Tax (Appeals) [CIT(A)] is bad both in the eye of law and on facts.
2. On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law, in rejecting the contention of the assessee that the proceedings initiated under section 153C against the assessee and the assessment framed under section 153C read with section 143(3) are in violation of the statutory conditions of the Act and the procedure prescribed under the law and as such the same is bad in the eye of law and liable to be quashed.
3. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in rejecting the contention of the assessee that the proceedings initiated under Section 153C and order passed by the learned Assessing Officer (AO) under Section 143(3) read with section 153C is without jurisdiction.
4. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in rejecting the contention of the assessee that the additions made under Section 153C are bad in law in the absence of any incriminating material belonging to the assessee being found during the course of the search.
5. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in rejecting the contention of the assessee that the documents on the basis of which the addition was made do not belong to the assessee and accordingly the assumption of jurisdiction under section 153C is illegal and consequent reassessment

order passed by the AO is liable to be quashed.

6. On the facts and circumstances of the case, the proceedings initiated under Section 153C and the assessment framed under Section 153C is bad and liable to be quashed in the absence of any satisfaction being recorded by the AO that the incriminating material belonging to the assessee was found during the course of the search.

7. The respondent craves leave to add amend on alter any of the grounds of cross objection.”

5. Representatives of both the sides were heard at length. Case records carefully perused. Relevant documentary evidence brought on record duly considered in light of Rule 18(6) of the ITAT Rules.

6. Peculiar facts of the case are that a search and seizure operation was conducted at the residential premises of various persons associated with Urbtech Group of Companies on 10.10.2013. One of the seized documents shows that Hella India Lighting Pvt Ltd [HILPL] had sold a piece of land measuring 10813.9 sq. yards to M/s Deutshe Motoren Pvt Ltd [DMPL] on 13.01.2011.

7. Basis this, the Assessing Officer formed a belief that the assessee had sold a piece of land by suppressing cost to Rs. 8.75 crores. The entire decision of the Assessing Officer is based upon the agreement

seized from the premises of Shri Arun Ghai wherein it was stated that industrial plot was to be purchased vide agreement executed on 15.09.2010 between DMPL and M/s Bhupendra Autotech Industries Pvt Ltd [BAIPL] having an area of 10813.9 sq. yards for a total consideration of Rs. 24.75 crores

8. Later on, by way of another agreement, the Assessing Officer came to know that the said part was sold for Rs. 16 crores and the assessee has suppressed consideration of Rs. 8.75 crores.

9. The explanation of the assessee that the MOU dated 03.06.2010 between HILPL and BAIPL was cancelled. It was explained that on the basis of this cancelled agreement, BAIPL had agreed to sell part of the property to DMPL for a consideration of Rs. 24.75 crores and since the MOU with the assessee dated 03.06.2010 was cancelled, BAIPL cancelled its agreement with DMPL.

10. It was further explained that the assessee entered into three separate agreements with three different parties of the same group. First agreement dated 22.12.2010 was with BAIPL for a consideration of Rs. 28.98 crores. Second agreement was with DMPL dated

22.12.2010 for a consideration of Rs. 16 crores and the third agreement dated 22.12.201 with BSL Casting Pvt Ltd for a consideration of Rs. 4.51 crores.

11. It was strongly contended that there is no suppression of any sale consideration and moreover, the document which is being questioned by the Assessing Officer is between BAIPL and DMPL and not with the assessee. Therefore, no adverse inference should be drawn against the assessee.

12. The Assessing Officer disregarded the factual matrix mentioned hereinabove and completed the assessment by making an addition of Rs. 8.75 crores.

13, Before the Id. CIT(A), the assessee once again explained the factual matrix discussed hereinabove and after considering the entire facts, the Id. CIT(A) agreed that the sale consideration of Rs. 24.75 crores mentioned in the MOU and agreement was between DMPL and BAIPL and the assessee had no role to play.

14. The ld. CIT(A), on proper appreciation of facts, deleted the addition of Rs. 8.75 crores.

15. Before us, the ld. DR placed strong reliance on the findings of the Assessing Officer and read the relevant part of the assessment order. It is the say of the ld. DR that cancellation of MOU date 03.06.2010 and then reentering into sale agreement with three different parties is nothing but a colourable device to avoid actual sale transaction.

16. The ld. DR vehemently stated that the fair market value which was pegged at Rs. 24.74 crores was ultimately shown at Rs. 16 crores thereby concealing consideration of Rs. 8.75 crores.

17. Per contra, the ld. counsel for the assessee reiterated the factual matrix and stated that the ld. CIT(A) has properly appreciated the facts and there is no error or infirmity in the findings of the ld. CIT(A).

18. We have given thoughtful consideration to the facts of the case. The undisputed fact is that search and seizure operation was conducted not at the premises of the assessee but at the premises of persons associated with Urbtech Group of companies. It is a fact that

by MOU dated 03.06.2010, the assessee agreed to sell property situated at 27-B, Faridabad, Haryana to BAIPL for a consideration of Rs. 49.25 crores.

19. It is also an undisputed fact that BAIPL entered into an agreement with DMPL for a consideration of Rs. 24.75 crores. It is also undisputed that the assessee has no role to play in this transaction of BAIPL with DMPL. Since the MOU dated 03.06.2010 was cancelled, agreement between BAIPL and DMPL automatically got cancelled. Thereafter, the assessee entered into sale agreement with three parties of Urbtech group being BAIPL, DMPL and BSL Casting Pvt Ltd separately for three separate parts of the same property.

20. Total consideration now received by the assessee is Rs. 49.51 crores. The entire edifice of the addition revolves around the alleged agreement between BAIPL and DMPL in which the assessee had no role to play. Therefore, the addition of Rs. 8.75 crores based upon unexecuted agreement between BAIPL and DMPL is nothing but surmises and conjectures of the Assessing Officer without there being any documentary evidence.

21. There is not even a whisper of any verification made by the Assessing Officer from any of the three parties with whom the assessee has done the impugned transaction. Considering the facts of the case is totality, we do not find any reason to interfere with the findings of the Id. CIT(A).

22. In the result, the appeal of the Revenue in ITA No. 4187/DEL/2018 is dismissed and the Cross objection in CO No. 80/DEL/2022 is dismissed as not pressed.

The order is pronounced in the open court on 08.01.2024.

Sd/-

**[YOGESH KUMAR U.S]
JUDICIAL MEMBER**

Sd/-

**[N.K. BILLAIYA]
ACCOUNTANT MEMBER**

Dated: 08th JANURARY, 2024

VL/

Copy forwarded to:

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

Asst. Registrar,

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	