

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

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

ITA No.2677 & 2678/Del/2023  
Assessment Year: 2011-12 & 2012-13

<b>DCIT Faridabad</b>	<b>Vs.</b>	<b>Martial Buildcom P. Ltd. Office No.1221A, Devika Tower, 12<sup>th</sup> Floor, 6, Nehru Place, New Delhi-110019 PAN No.AAFCM3226L</b>
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>

Appellant by	Sh. Subhra Jyoti Chakraborty, CIT DR
Respondent by	Sh. Lalit Mohan, CA

Date of hearing:	22/01/2024
Date of Pronouncement:	31/01/2024

**ORDER**

**PER N. K. BILLAIYA, AM:**

ITA No.2677/Del/2023 and 2678/Del/2023 are two separate appeals by the revenue preferred against the common order of the CIT(A)-3, Gurgaon dated 21.07.2023 pertaining to A.Y. 2011-12 and 2012-13.

2. Since common ground have been taken in both the appeals they were heard together and are disposed of by this common order for the sake of convenience and brevity.

3. The common grounds, though the quantum may differ read as under :-

1. *Whether the Ld. CIT (A) is right in deleting the addition of Rs. 1,47,21,000/- made on account of disallowance u/s 40a(ia) of the Act as the assessee failed to deduct TDS on EDC payment to Huda by holding that no incriminating material was found and seized during the course of search operation?*

2 *Whether the Ld. CIT (A) is right in deleting the addition of Rs.22,96,343/- made on account of differential value of TDR as per books and as per report of DVO by holding that no incriminating material was found and seized during the course of search operation?*

3 *Whether the trial balance showing payment of EDC to Huda and details of Transfer of Development Right (TDR) does not amount to be incriminating material in view of facts had there been no search conducted, aforesaid information could not be passed on to the Department?*

4 *Whether the decision of Hon'ble Supreme Court in the case PCIT, Central-3 vs Abhisar Buildwell P. Ltd, and in the case of DCIT Vs U.K Paints (Overseas) Ltd., are applicable to this case in view of facts that both the additions are based upon trail balance found and seized during the course of search operation?*

*5. The appellant craves to add, amend, alter or modify any grounds of appeal at the time of hearing.*

4. Briefly stated the facts of the case are that a search and seizure operation u/s. 132 of the Act was conducted on 21.07.2016 at the residential as well as office premises of M3M Group of cases. Among the documents seized contained information pertaining to assessee and after recording his satisfaction statutory notices were issued and served upon the assessee.

5. During the course of the scrutiny assessment proceedings referring to the trial balance as the incriminating material found at the time of search the AO raised specific query in relation to the under valuation of the transfer of development rights. After appreciating the submissions of the assessee the AO concluded that the difference between the DVO and as per the books of accounts of the assessee is the income of the assessee and made addition of Rs.2296343/- in A.Y. 2011-12 and Rs.1639995/- in A.Y. 2012-13.

6. Proceeding further the AO noticed that the assessee has received reimbursements from the M3M Group which were not being routed through the P & L account. The assessee was asked to submit details of such reimbursement. The assessee was also asked to show cause why TDS was not deducted from the payment to HUDA. The assessee explained that it has given rights to M3M India Limited to develop land covered in the agreement on the condition

that the transferee / developpee was to bear and reimburse all expenses at actual basis. It was explained that the assessee has not claimed expenditure of EDC. The explanation of the assessee was dismissed by the AO who completed the assessment by making disallowance of Rs.14721000/- in A.Y.2011-12 and Rs.35069720/- in A.Y. 2012-13.

7. Assessee agitated the matter before the CIT(A) strongly contending that both the additions are devoid of any incriminating material found at the time of search. The CIT(A) was convinced that transactions of TDR cannot be considered as incriminating as the same are part of regular books of accounts and income tax return. The CIT(A) further observed that the AO has made examination of transactions recorded in the books of account.

8. Drawing support from the decision of the Hon'ble High Court in the case of **Kabul Chawla 61 taxmann.com 412** and also from the decision of the Hon'ble Supreme Court in the case of **Abhisar Buildwell 454 ITR 212** the CIT(A) deleted the impugned additions.

9. Before us the DR strongly supported the findings of the AO. The Counsel for the reiterated what has been stated before the first appellate authority.

10. We have given a thoughtful consideration to the orders of the authorities below. In so far as the addition on account of transfer of

development rights is concerned the conclusion of the AO that “difference between the valuation of the property as per DVO and as per the books of account of the assessee being added to the income of the assessee” is self explanatory in the sense while making the addition no reference is made to any incriminating material. The only basis is the difference between the valuation report and the value shown in the books of account.

11. In so far as the addition on account of EDC to HUDA is concerned the same is made on examination of the entries in the books of account, therefore, this is also devoid of any incriminating material.

12. Considering the facts of the case in totality we do not find any reason to interfere with the findings of the CIT(A). Both the appeals by the revenue are dismissed.

Order pronounced in the open court on 31.01.2024.

Sd/-  
**(SAKTIJIT DEY)**  
**VICE PRESIDENT**

\*NEHA\*

Date:- 31.01.2024

Copy forwarded to:

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

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

ASSISTANT REGISTRAR  
NEW DELHI