

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "A": NEW DELHI
BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR US, JUDICIAL MEMBER**

ITA No. 2549/Del/2019
(Assessment Year: 2015-16)

Ansal Properties and Infrastructure Pvt. Ltd, 115, Ansal Bhawan, 16, KG Marg, New Delhi (Appellant) PAN: AAACA0006D	Vs.	ACIT, Circle-2(2), New Delhi (Respondent)
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ITA No. 3170/Del/2019
(Assessment Year: 2015-16)

ACIT, Circle-2(2), New Delhi (Appellant) PAN: AAACA0006D	Vs.	Ansal Properties and Infrastructure Pvt. Ltd, 115, Ansal Bhawan, 16, KG Marg, New Delhi (Respondent)
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Assessee by :	Shri R S. Singhvi, Adv Shri Satyajeet Goel, Adv
Revenue by:	Shri Zafarul Haque Tanweer, CIT DR
Date of Hearing	18/01/2024
Date of pronouncement	31/01/2024

ORDER

PER M. BALAGANESH, A. M.:

1. This appeal in ITA No. 2549/Del/2019 is filed by the assessee and the ITA No. 3170/Del/2019 filed by the revenue for A.Y. 2015-16 arises out of the order by Id CIT(A)-I, New Delhi in appeal No. 425/17-18 dated 10.01.2019 (hereinafter referred to as Id CIT(A) in short) against the order of assessment passed u/s

143(3) of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 27.01.2018 by the ACIT, Circle-2(2), New Delhi (hereinafter referred to as Id. AO).

2. As these are cross appeals, they are taken up together and disposed of by this common order for the sake of convenience.

3. The assessee has raised the following grounds of appeal:-

"1. That on facts and circumstances of the case and in law, the Commissioner of Income tax (Appeals)-1, New Delhi [briefly "the CIT(A)"] did not appreciate the ratio of Chennai Properties & Investments Ltd. v. CIT (2015) 373 ITR 673 (SC) in upholding the addition on account of notional annual letting value made under section 22 of Income tax Act, 1961 ('the Act').

1.1 That on facts and circumstances of the case and in law, the CIT(A) did not appreciate that closing stock of business of real estate is outside the ambit of section 22 of the Act.

2 That on facts and circumstances of the case and in law, the CIT(A) did not appreciate that out of total inventory of constructed area of 4,95,300.70 sqft in 35 projects, area of 23,744.56 sqft was actually let out and rental income derived there-from was duly declared in P&L A/c and was assessed to tax.

2.1 That on facts and circumstances of the case and in law, the CIT(A) has erred in sustaining addition of Rs.82,78,816/-being notional ALV of 23744.56 sq.ft. area of inventory of closing stock actually let out allegedly for the reason that the issue was not separately raised in the grounds of appeal.

3. That on facts and circumstances of the case and in law, the CIT(A) has erred in assessing notional ALV of closing stock in respect of areas under legal dispute or otherwise, for such areas could neither be sold nor let out.

3.1 That on facts and circumstances of the case and in law, the CIT(A) has erred in sustaining addition of Rs.55,26,298/- being notional ALV of 15,085.28 sq.ft. area of closing stock inventory under litigation allegedly for the reason that the issue was not separately raised in the grounds of appeal.

4. That on facts and circumstances of the case and in law, the CIT(A) has erred in upholding addition of notional ALV in respect of inventory under self occupation of the Appellant.

5. That on facts and circumstances of the case and in law, the CIT(A) has erred in holding that transfer of land or building made during financial year 2013- 14 and registered after 1.4.2014 would be governed by section 43CA of the Act

5.1 That on facts and circumstances of the case and in law, the CIT(A) has erred in not appreciating that since procedure laid down in section 43CA of reference to Valuation Officer was not followed, therefore, addition of Rs.6,38,41,629/- was not sustainable.

5.2 That on facts and circumstances of the case and in law, the CIT(A) has erred in not following the binding decision of ITAT Delhi Bench in ITO v. Aditya Narain Verma (HUF) (2017) 187 TTJ 476.

6.1 That on facts and circumstances of the case and in law, the CIT(A) has erred in sustaining the addition of Rs.1,89,54,323/- in respect of revenue from windmill.

6.2 Without prejudice, on facts and circumstances of the case and in law, the CIT(A) has erred in taking gross revenue from windmill and not considering expenses incurred against it. Therefore, addition should have been restricted to Rs.1,43,67,779/-."

4. The revenue has raised the following grounds of appeal:-

"1. On the facts and in the circumstances of the case, the Ld. CIT (A) has erred in directing the AO to take the ALV value of the basement area at 50% of the ALV of the properties located at ground floor and above.

2. On the facts and in the circumstances of the case, the Ld.CIT(A) has erred in deleting the addition of Rs.2,13,52,716/- made by the AO on account of payment of Employees' Contribution to PF and ESI deposited beyond the due date u/s 36(1)(va) of the I.T. Act.

3. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of Rs.6,38,41,629/- u/s 43CA made by the AO on account of lesser sale consideration on transfer of properties than the value adopted by the stamp duty valuation authority.

4. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in restricting the addition of Rs.5,74,71,115/- to Rs.1,89,54,323/- (being the revenue for the period 01.04.2014 to 30.06.2014) made by the AO on account of Revenue from Wind Mill sold to M/s Rugby Renergy Pvt. Ltd. For the following reasons:

a) The assessee has itself admitted that the sale of Wind Mill to M/s Rugby Renergy Pvt. Ltd. had not been completed during the financial year.

b) The agreement did not come into force during the current financial year and clause XI of the said agreement cannot be said to have been executed.

c) The assessee was the owner of the assets during the financial year and therefore the revenue from the Wind Mills is attributable to the assessee company for the entire financial year."

5. The Ground No.1 raised by the assessee was stated to be not pressed by the Id. AR. The same is reckoned as a statement made from the Bar and accordingly Ground No.1 raised by the assessee is hereby dismissed as not pressed.

6. The Ground Nos.1.1., 2 & 2.1. raised by the assessee are challenging the addition made on Annual Lettable Value (ALV) of properties where rent has been considered as business income.

6.1. We have heard the rival submissions and perused the materials available on record. The assessee is a company engaged in the business of development / construction and sale of flats, plot etc. During the year under consideration, the assessee had filed its return of income on 30.11.2015 declaring taxable income of Rs 27,17,72,820/-. It is not in dispute that the assessee had held properties as stock in trade and the same are classified into following categories :-

- a) Flats open for sale – notional rental income to be added in the hands of the assessee ;
- b) Flats that were actually let out by the assessee – rental income already offered to tax by the assessee in the return ;
- c) Flats that were used for the purpose of business by the assessee – no notional rental income could be added ; and
- d) Flats under litigation for which approval was not granted by Municipal Corporation of Delhi (MCD) – no rental income could be added.

6.2. At the outset, both the parties before us fairly submitted that the issue raised in Ground Nos. 1.1., 2 and 2.1. by the assessee are already covered in favour of the assessee by the order of this Tribunal in assessee's own case in ITA Nos. 5010 & 5011 /Del/ 2017 and ITA Nos. 5679 & 5680/Del/2017 for Asst

Years 2013-14 and 2014-15 (cross appeals) respectively dated 23.2.2022. The relevant operative portion of the said order is reproduced hereunder:-

"22. Facts on record show that the assessee has shown certain spaces/units which are given on rent and has been declared under the Schedule Sales and other income of the accounts. Copy of such account was filed before the Assessing Officer. Since no findings have been given in the assessment order by the Assessing Officer, the issue was raised by the assessee before the Id. CIT(A).

23. Before the Id. CIT(A), the assessee furnished assessment orders for Assessment Year 2011-12 and 2012-13 wherein the Assessing Officer has excluded the properties which have been given on rent for calculation of notional rental value. Following the findings given in Assessment Years 2011-12 and 2012-13, the Id. CIT(A) directed to exclude such properties.

24. Since the Id. CIT(A) has followed the findings of the Assessing Officer himself given in Assessment Years 2011-12 and 2012-13, we do not find any merit in this grievance of the Revenue. Ground No. 1(b) is dismissed."

6.3. Respectfully following the aforesaid decision, the Ground Nos. 1.1, 2 & 2.1. raised by the assessee are allowed.

7. The Ground Nos. 3 & 3.1. raised by the assessee are determination of ALV in respect of property under litigation.

7.1. We have heard the rival submissions and perused the materials available on record. Both the parties before us fairly submitted that the issue raised in Ground Nos. 3 & 3.1. by the assessee are already covered in favour of the assessee by the order of this Tribunal in assessee's own case in ITA Nos. 5010 & 5011 /Del/ 2017 and ITA Nos. 5679 & 5680/Del/2017 for Asst Years 2013-14 and 2014-15 (cross appeals) respectively dated 23.2.2022. The relevant operative portion of the said order is reproduced hereunder:-

"5. Ground No. 2 of assessee's appeal relates to the non-exclusion of ALV of spaces/flats under litigation/disputes admeasuring 7511 sq. ft in Jyoti Shikar Building.

6. Briefly stated, the facts of the case are that the Assessing Officer has included ALV in respect of 23 spaces/flats measuring 7511 sq ft in Jyot Shikar Building, Janakpuri which was completed 20 years back but was

not approved by the Municipal Corporation of Delhi for occupation on the ground that the same were not as per the actual plan.

7. The assessee strongly contended that notional ALV in respect of such spaces needs to be excluded, as the same has not been approved by the MCD for occupation.

8. The Id. CIT(A) dismissed this ground of the assessee following the findings given in earlier assessment years.

9. Before us, the Id. counsel for the assessee prayed for restoration of this grievance to the Assessing Officer as the assessee is now in a position to furnish necessary documentary evidences in support of its claim.

10. We find that since the evidences have not been submitted before the lower authorities, this grievance has been decided against the assessee. In the interest of justice and fair play, we restore this issue to the file of the Assessing Officer. The assessee is directed to furnish necessary documentary evidences to justify its claim of non inclusion of ALV of storage of 7511 sq. ft in Jyoti Shikar, Janakpuri. The Assessing Officer is directed to examine the evidences and decide the issue afresh. Ground No. 2 is allowed for statistical purposes."

7.2. Respectfully following the aforesaid decision, the Ground Nos. 3 & 3.1. raised by the assessee are allowed for statistical purposes by restoring to the file of Id. AO.

8. The Ground No. 4 raised by the assessee is determination of ALV in respect of property under self-occupation.

8.1. We have heard the rival submissions and perused the materials available on record. Both the parties before us fairly submitted that the issue raised in Ground No. 4 by the assessee is already covered in favour of the assessee by the order of this Tribunal in assessee's own case in ITA Nos. 5010 & 5011 /Del/ 2017 and ITA Nos. 5679 & 5680/Del/2017 for Asst Years 2013-14 and 2014-15 (cross appeals) respectively dated 23.2.2022. The relevant operative portion of the said order is reproduced hereunder:-

"15. Facts on record show that the Assessing Officer has included ALV of certain properties which have been claimed by the assessee to be occupied for its own business purposes. These properties have been claimed to have been used for storage purposes or for office purposes. The Assessing Officer has not accepted

the claim of the assessee and made addition in respect of notional value of the ALV.

16. Before the Id. CIT(A), the assessee contended that it has filed evidences in support of usage of spaces by the assessee alongwith copies of property tax, bills issued by the NDMC, New Delhi.

17. After considering the evidences and after perusing the decision given in Assessment Year 2010-11, 2011-12 and 2012-13, the Id. CIT(A) directed the Assessing Officer to exclude the ALV of the said 12 properties.

18. Before us, the Id. DR strongly supported the findings of the Assessing Officer.

19. Per contra, the Id. counsel for the assessee relied upon the decision of the Id. CIT(A).

20. In our considered opinion, section 22 of the Act itself excludes ALV of such properties of which the assessee is owner and has occupied for the purpose of any business or profession carried on by him. Since the assessee has furnished necessary evidences which have been duly verified by the Id. CIT(A), we to interfere with the findings of the CIT(A). Ground No. 1(a) is dismissed."

8.2. Respectfully following the aforesaid decision, the Ground No. 4 raised by the assessee is allowed.

9. The Ground Nos. 5 to 5.2. raised by the assessee were stated to be not pressed by the Id. AR. The same is reckoned as a statement made from the Bar and accordingly Ground Nos. 5 to 5.2. raised by the assessee are hereby dismissed as not pressed.

10. The Ground Nos. 6.1. & 6.2. raised by the assessee are challenging the action of the Id CIT(A) in sustaining the addition of business income in respect of sales for the period of first three months (1.4.14 to 30.6.14) on a proportionate basis. The inter connected issue involved therein is Ground No. 4 raised by the revenue challenging the action of the Id. CIT(A) in deleting the addition made by the Id. AO on account of sales for the whole year and sustaining it only for first 3 months.

10.1. We have heard the rival submissions and perused the materials available on record. The assessee company was the owner of 8 windmills in Gujarat. The assessee company decided to sell the windmills to M/s Rugby Renergy P Ltd and

for the said purpose entered into an agreement to sell dated 22.07.2014. As per the said agreement, the rights in the windmills were transferred in favour of M/s Rugby Renergy P Ltd and it was specifically agreed between the parties vide Clause 5(xi) of the agreement that the revenue from operation of windmills shall belong to the buyer i.e Rugby Renergy P Ltd from 1.7.2014 onwards. Subsequently the said agreement was revised on 29.12.2014 . We find that ultimately both the agreements stood culminated into final slump sale agreement dated 23.3.2015. We have perused the following agreements placed on record for the purpose of adjudication of this dispute:-

- a) Agreement to sell dated 22.7.2014 enclosed in Pages 160 to 170 of the Paper Book
- b) Agreement to sell dated 29.12.2014 enclosed in Pages 171 to 180 of the Paper Book
- c) Slump Sale Agreement dated 23.3.2015 enclosed in Pages 181 to 195 of the Paper Book

10.2. The Id. AO in para 7.7 of his order had held that since the sale of windmill was not completed in the year under consideration, the entire revenue from windmill net of its expenses amounting to Rs 5,74,71,115/- is taxable in the hands of the assessee company. The Id. CIT(A) in Para 11.4. of his order held that Clause 5(xi) of the Agreement to sell dated 22.7.2014 stipulates transfer of revenue from windmill to be effective from 1.7.2014 and accordingly the revenue from operation of windmills upto 30.6.2014 amounting to Rs 1,89,54,323/- would become taxable in the hands of the assessee company and remaining 9 months revenue would be taxable in the hands of the buyer i.e. Rugby Renergy P Ltd. Against this finding, both the assessee as well as the revenue are in appeals before us.

10.3. It is a fact that the assessee had not offered any revenue from windmills net of expenses during the year under consideration to tax on the ground that the buyer i.e Rugby Renergy P Ltd had offered the entire revenue from

operations of windmills and its related expenses for the whole year to tax in its income tax returns. We find that the Id. CIT(A) had gone by the specific clause 5(xi) of the Agreement dated 22.7.2014 and had held that the revenue from operation of windmills for the period 1.4.2014 to 30.6.2014 (first three months) would be taxable in the hands of the assessee company. We find that while holding so, the Id. CIT(A) did not give corresponding deduction for expenses incurred for the same period of 3 months under the head 'income from business'. In our considered opinion, the assessee would be duly entitled for deduction of expenses incurred qua the windmill unit for the period of 1.4.2014 to 30.6.2014 which had been worked out at Rs 45,86,544/-, subject to verification of the figures stated thereon by the Id. AO . Hence the Id. AO is directed to examine the veracity of the figure of Rs 45,86,544/- stated by the assessee and grant deduction accordingly. The assessee is hereby directed to furnish the break up of figures of Rs 45,86,544/- before the Id. AO and prove that the same were incurred for the purpose of windmill division and pertains to the period of first three months of the year under consideration.

10.4. Further we find that pursuant to the agreement dated 22.7.2014, both the buyer and seller had undertaken various acts which demonstrates that the beneficial ownership of the windmills got transferred in favour of the buyer by the seller i.e. the assessee herein. The legal ownership alone stood transferred by the assessee in favour of the buyer by way of Slump Sale Agreement dated 23.3.2015 but the beneficial ownership already stood transferred on 1.7.2014 which is evident from the following acts carried out by the parties :-

a) Payments received through regular banking channels by the assessee from the buyer as under:-

23.07.2014	Rs 3,00,00,000/-	Vide RTGS 04807630001562
17.10.2014	Rs 2,00,00,000/-	Vide HDFC Bank Cheque No. 000044
31.12.2014	Rs 1,00,00,000/-	Vide HDFC Bank Cheque No. 000154
31.12.2014	Rs18,00,00,000/-	Vide IDBI Loan Disbursement
27.3.2015	Rs 4,50,00,000/-	Vide RTGS 0127103000015464
23.3.2015	Rs 1,50,00,000/-	Vide HDFC Bank Cheque No. 000181
20.5.2015	Rs 1,18,50,000/-	Vide RTGS

22.5.2015	Rs 39,50,000/-	Vide HDFC Bank Cheque No. 000194
21.8.2015	Rs 1,36,11,653/-	Vide HDFC Bank Cheque No. 000106
21.8.2015	Rs 73,88,347/-	Vide HDFC Bank Cheque No. 000110

b) For enabling the buyer to avail loan from IDBI Bank, the assessee gave No Objection Certificate (NOC) to IDBI Bank on 18.9.2014 ; IDBI Bank issued Letter of Intent for sanction of loan to the buyer on 3.11.2014 and No Dues Certificate issued by IDBI Bank to the assessee on 5.1.2015.

c) Lease deeds for purchase of land were entered into on 28.1.2015 and 12.2.2015.

d) Certificate issued by Windmills Maintenance Agency M/s Suzlon Global Services Ltd substituting the name of the buyer in the place of the assessee company on 24.11.2014.

e) Insurance Policy of Windmills taken in the name of the buyer on 12.1.2015.

f) Particulars of communication by the assessee to various agencies for transferring power purchase agreements in the name of the buyer dated 16.2.2015 and 17.2.2015.

g) The buyer of Windmills i.e Rugby Renergy P Ltd started making payment of interest on outstanding loan amounts taken by the assessee for purchase of the said windmills vide Clause 5(XI)(B) of the Agreement dated 22.7.2014. It is a fact that the interest cost stood credited in the books of the assessee company which has been accepted by the Id. AO. While this is so, the Id. AO would not be justified in holding that the agreement dated 22.7.2014 was not acted upon by the parties.

10.5. We find that the revenue clause as agreed in the Agreement dated 22.7.2014 is operative and forms integral part of the Slump Sale Agreement dated 23.3.2015. This goes to prove that the original agreement dated

22.7.2014 was acted upon by the parties and it finally stood culminated into Slump Sale Agreement.

10.6. In view of the aforesaid observations, we hold that the order of the Id. CIT(A) requires to be modified only to the limited extent of granting deduction for expenses incurred during the period 1.4.2014 to 30.6.2014 in the windmill division and other findings given by the Id. CIT(A) does not require any interference. The Ground Nos. 6.1. & 6.2. raised by the assessee and Ground No. 4 raised by the revenue are disposed of in the abovementioned terms.

11. The Ground No.1 raised by the revenue is challenging the action of the Id. CIT(A) in determining the ALV of the property at 50% for basement area in respect of properties located at ground floor on the ground that it is arbitrary in nature.

11.1. We have heard the rival submissions and perused the materials available on record. We find that the Id. AO had sought to assess the rental income for the basement area of the property on notional basis by determining ALV of the property on the basis in the following manner:-

SI. No	Name of Building/Project	Unsold Area (In Sqft.)	Unit	Rate per Sqft per month	
1	Ansal Chamber-I	264	Sq. Ft.	44.10	1,39,709
2	Sushant Vyapar Kendra	912	Sq. Ft.	33.60	3,67,718
3	Sushant Vyapar Kendra-Basement	2,569	Sq. Ft.	33.60	10,35,821
4	Sushant Shopping Arcade	6,046	Sq. Ft.	33.60	24,37,747
5	Palam Vyapar Kendra	7,202	Sq. Ft.	33.60	29,03,689
6	Palam Triangle	781	Sq. Ft.	33.60	3,14,899
7	Peach Tree	596	Sq. Ft.	16.80	1,20,154
8	Time Square	9,297	Sq. Ft.	38.85	43,34,448
9	Sushant Estate EWS	205	Sq. Ft.	11.55	28,413
10	Ansal Plaza-Gurgaon	13,104	Sq. Ft.	33.60	52,83,533
11	Roman Court Sonapat	6,943	Sq. Ft.	16.80	13,90,709
12	Sunshine County	8,525	Sq. Ft.	11.55	11,81,365
13	Sunshine County EWS	9,974	Sq. Ft.	5.25	6,28,362
14	Neel Padam II	3,292	Sq. Ft.	16 80	6,63,667
15	Rajni Gandha 1	6,396	Sq. Ft.	16 80	12,89,434
16	Rajni Gandha 11	521	Sq. Ft.	16.80	1,05,034
17	Ansal Plaza Greater Noida	34,618	Sq. Ft.	33.60	1,19,57,978
18	Highway Plaza- Jalandhar	16,109	Sq. R.	33.60	64,95,149

19	Ludhiana Boulevard	2,573	Sq. Ft.	27.30	8,42,915
20	Jodhpur ARP	28,277	Sq. ft	16.80	57,00,643
21	Jodhpur- Sushant Haat	757	Sq. Ft.	11.55	1,04,920
22	Jaipur- Orchid	18,954	Sq. Ft.	9.45	21,49,384
23	Jaipur- Tulip	13,227	Sq. Ft	9.45	14,99,942
24	Palam Corporate Plaza	88,021	Sq. Ft.	26.25	2,77,26,615
25	Ansal Highway Plaza Sonapat 1.4.2	1,57,599	Sq. Ft.	•••	—
26	Corporate Park Noida	10,201	Sq. Ft.	26.25	32,13,315
27	Ajmer- Ansal Courtyard	22,944	Sq. Ft.	10.50	28,90,896
28	Ajmer- Abhilasha Home, Phase-I	2,120	Sq. Ft.	5.25	1,33,560
29	Ajmer- Abhilasha Home-I, Phase-II	3,500	Sq. Ft.	5.25	2,20,500
30	Mohali GL-I Courtyard	9,071	Sq.Ft.	10.50	11,42,996
31	Mohali GL-I Happy Homes	1,222	Sq. Ft.	5.25	76,986
32	Jaipur-Happy Home	850	Sq. Ft.	9.45	96,390
33	Jaipur- Abhilasha Home	8,480	Sq. Ft.	9.45	9,61,632
34	Jaipur Sweet Home, Anand Lok	1,488	Sq. Ft.	9.45	1,68,739
Total					Rs.8,96,16,461/-

11.2. We find that the Id. CIT(A) observed that the basement area of the property could at best be used only for storage facilities and ALV of such storage space could be estimated to be roughly 50% of the property. The Id. CIT(A) also appreciated the fact that there are lot of restrictions in use of basement area when compared to ground floor and above. The revenue has challenged the relief of 50% granted by the Id. CIT(A). We find that the MCD guidelines do not permit the usage of basement for residential purposes. It could be let out only for storage purposes or car parking purposes. Hence we find that the Id. CIT(A) had fairly estimated the usage of basement area to be 50%. We further find that the assessee had not challenged the action of the Id. CIT(A) before us in this regard. It is a fact that the basement area could not be utilized for residential purposes. We duly appreciate the fact that the basement area could have only restrictive usage and cannot command the same rental value as the ground floor commands. Hence the relief granted by the Id. CIT(A) at the rate of 50% is correct and would meet the ends of justice in the peculiar facts and circumstances of the instant case. Accordingly, the Ground No.1 raised by the revenue is dismissed.

12. The Ground No.2 raised by the revenue is challenging the deletion of disallowance by the Id. CIT(A) on account of Employees contribution to PF and ESI.

12.1. We have heard the rival submissions and perused the materials available on record. The Id. AR fairly stated that the issue in dispute is decided against the assessee by the recent decision of the Hon'ble Supreme Court in the case of Checkmate Services Pvt Ltd vs CIT reported in 143 taxmann.com 178 (SC) wherein it was held that the employees contribution to PF / ESI remitted after the due dates prescribed under the respective Acts but deposited before the due date of filing the return of income u/s 139(1) of the Act would not be allowed as deduction. The Id. AR drew our attention to the tabulation mentioned by the Tax Auditor in the Annexure to Form 3CD mentioning the month wise details of PF / ESI payments, due date of payments and actual date of remittance thereon. The Id.AR submitted that in the said tabulation, the Tax Auditor had mentioned the actual date on which the cheques issued by the assessee were cleared in the bank account. He further argued that the cheques in favour of PF / ESI Authorities were duly issued by the assessee on or before the due dates prescribed under the respective PF / ESI Acts i.e. the Cheques were tendered to the bank on or before the due date, but the cheques were cleared after the due dates. The Id.AO had also taken cognizance of the said table in his assessment order. The Id. AR argued that once the date on which cheques were tendered to the bank by the assessee, the assessee loses control over it. He prayed for setting aside of this issue to the file of Id. AO. The Id. DR vehemently relied on the order of the Id. AO. We find that the claim made by the assessee requires factual verification by the Id. AO. Hence we deem it fit and appropriate to restore this issue to the file of Id. AO for denovo adjudication in accordance with law. Accordingly, the Ground No. 2 raised by the revenue is allowed for statistical purpose.

13. The Ground No. 3 raised by the revenue is challenging the deletion of addition made u/s 43CA of the Act by the Id. CIT(A). The Id. AR before us stated

that the issue in dispute is to be decided in favour of the revenue and the Id. CIT(A) erred in granting relief to the assessee. Since no arguments were advanced by the Id. AR responding to the arguments of the Id. DR on this issue, the Ground No. 3 raised by the revenue is allowed.

14. In the result, both the appeals of the assessee as well as the revenue are partly allowed for statistical purposes.

Order pronounced in the open court on 19/01/2024.

-Sd/-
(YOGESH KUMAR US)
JUDICIAL MEMBER

-Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated: 19/01/2024
A K Keot

Copy forwarded to

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

ASSISTANT REGISTRAR
ITAT, New Delhi