

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

**BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
SH. ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA No.1806/Del/2021
Assessment Year: 2018-19

DCIT CC Ghaziabad	Vs.	East View Developers Private Ltd. 305, Nirmal Tower, Barakhamba Road, Central, Delhi-110001 PAN No.AABCE5324E
(APPELLANT)		(RESPONDENT)

Appellant by	Ms. Sapna Bhatia, CIT DR
Respondent by	Sh. Ajay Wadhwa, Advocate

Date of hearing:	29/01/2024
Date of Pronouncement:	29/01/2024

ORDER

PER N. K. BILLAIYA, AM:

This appeal by the revenue is preferred against the order of the CIT(A), Kanpur-4 dated 06.09.2021 pertaining to A.Y.2018-19.

2. The grievance of the revenue read as under :-

(i) On facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition made by AO to the tune of Rs. 11,51,38,814/-on account of unexplained expenditure as the assessee has purchased the property but payments have been

made by M/s Mahalaxmi Buildtech Ltd., and the assessee has declared loan from M/s Mahaluxmi Buildtech Ltd. but no bank account has been submitted by the assessee from which payments has been made.

(ii) On facts and circumstances of the case and in law, the Ld CIT (A) erred in deleting the addition made by AO to the tune of Rs.8,98,25,416/- on account of trade payable as the assessee has failed to prove the identity and genuineness of the creditors, as the notice issued u/s 133(6) of the I.T Act to the creditors remained un-complied.

(iii) On facts and circumstances of the case and in law, the Ld. CIT(A) failed to allude to the relevant facts & circumstances and misread the facts to arrive at the conclusions.

(iv) That the appellant craves leave to add, modify, amend or delete any of the grounds of appeal at the time of hearing and all the above grounds are without prejudice to each other.”

3. Briefly stated the facts of the case are that the assessee filed its return of income electronically on 31.10.2018 declaring total income of Rs.10110/-. The return was selected for scrutiny assessment and accordingly statutory notices were issued and served upon the assessee.

4. The assessee is engaged in business of real estate and related activities. While scrutinizing the return of income the AO noticed that the assessee has shown purchases of Rs.115138814/-. The

assessee was asked to furnish the details of sales and purchase made alongwith documentary evidences. The assessee furnished necessary details. On perusal of the same the AO came to know that the assessee has received unsecured loans of Rs.97909307/- from two parties out of this loan amount of Rs.97109307/- has been received from Mahalunxmi Buildtech Pvt. Ltd. The assessee was asked to furnish confirmations, ITRs and relevant bank statements in respect of unsecured loans received during the year. Assessee furnished necessary details. In its reply the assessee also accepted that complete payments towards purchase of properties were made by Mahalunxmi Buildtech directly to the sellers.

5. The AO found that the entire payment of Rs.115138814/- towards purchase of properties have been made by Mahaluxmi Buildtech Pvt. Ltd. Out of which Rs.97109307/- has been shown as unsecured loans. The AO found that Mahaluxmi Buildtech Pvt. Ltd. has shown income of Rs.2.93 crores only which does not commensurate with the loan amount. The AO added Rs.115138814/- as unexplained u/s. 69C of the Act r.w.s. 115BBE.

6. Proceeding further the AO noticed that the assessee has shown trade payable of Rs.89825416/- in its balance sheet. The assessee was asked to furnish details, confirmed copy of account and ITRs to prove the genuineness of the transactions and identity of creditors. On receiving no plausible reply the AO added the sundry creditors of Rs.89825416/- as unexplained u/s. 68 of the Act r.w.s. 115BBE.

7. Assessee agitated the matter before the CIT(A) and strongly contended that the assessee has taken loan in the form of joint venture consortium to make the payment for the purchases of land. It was explained that during the year the assessee had made part payment to the sellers and outstanding balance amount is shown on the liability side as per creditors.

8. After considering the facts and the submissions the CIT(A) observed that the assessee has not made any payment towards purchases of properties all the payments have been made by Mahalunxmi Buildtech Pvt. Ltd which transaction has not been accepted because of the income of Mahaluxmi Buildtech Pvt. Ltd. The CIT(A) further observed that u/s. 69C of the Act the addition can be made only when the assessee has incurred any expenditure for which he does not offer any explanation. The CIT(A) found that the assessee has given details of all the purchases alongwith details of sellers alongwith sales deed. The CIT(A) concluded by holding that all the sale deeds have been duly executed and there is no doubt about the existence of the sellers and the property purchased. The CIT(A) deleted the addition of Rs. 115138814/-.

9. The CIT(A) further found that all the trade payables added by the AO are infact the persons who have sold the property to the assessee and the amount standing credit in their respective names

is the amount outstanding. The CIT(A) deleted the addition of Rs.89825416/-.

10. Before us the DR strongly supported the findings of the AO and read the operative part.

11. The Counsel reiterated what has been stated before the CIT(A).

12. We have given a thoughtful consideration to the orders of the authorities below. The AO himself has accepted that the entire payment of Rs.115138814/- has been made by Mahalunxmi Buildtech Pvt. Ltd. for purchase of property. We have also seen the balance sheet of Mahaluxmi Buildtech Pvt Ltd. which has total assets of Rs. 135 crores, therefore, it cannot be said that Mahaluxmi Buildtech Pvt. Ltd. does not have capacity to make the impugned payment.

13. Further the sellers who have not been paid fully during the year has been shown as trade creditors, therefore, we do not find merit in both the additions made by the AO which have been rightly deleted by the CIT(A) and such deletion cannot be faulted with. We decline to interfere.

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

15. Decision announced in the open court on 29.01.2024.

Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER

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
NEW DELHI