

IN THE INCOME TAX APPELLATE TRIBUNAL

DELHI BENCH "B", NEW DELHI

BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER,

AND

SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER

		ITA NO. 674/Del/2020			
		A.YR. : 2012-13			
ITO, WARD 10(4), NEW DELHI ROOM NO. 344-A, 3 RD FLOOR, C.R. BUILDING, NEW DELHI – 2		VS.		GYAN MARKETING ASSOCIATES P. LTD., A-13, KAILASH COLONY, NEW DELHI – 48 (PAN: AAACG2311B)	
(APPELLANT)				(RESPONDENT)	

Appellant by : Sh. Vivek Kumar Upadhyay, Sr. DR.
Respondent by : Sh. R.S. Ahuja, CA & Sh. Pushpdeep
Singh, Adv.

Date of hearing : 27.02.2024
Date of pronouncement : 04.03.2024

ORDER

PER SHAMIM YAHYA, AM :

The Revenue has filed the Appeal against the order of the Ld. CIT(A)-22, New Delhi relating to assessment year 2012-13 on the following grounds:-

1. Whether the Ld. CIT(A) has erred in allowing the appeal regarding disallowance of total commission paid on booking of space amounting to Rs. 1,23,87,897/-.
2. Whether, the Ld. CIT(A) has erred in allowing the appeal regarding disallowance u/s. 40(a)(ia) of the Income Tax Act of the interest payable and fit out charges received from buyers amounting to Rs. 4,69,31,575/-.
3. Whether the Ld. CIT(A) has erred in allowing the appeal regarding disallowance of amount paid towards assured return amounting to Rs. 29,31,312/-.

4. The appellant craves leave to add, amend, or reserving the right to amend, modify, add, or forego any ground(s) or appeal at any time before or during the hearing of this appeal.

2. Briefly stated facts are that assessee is engaged in the business of trading of Real Estate spaces. During the year under consideration, the assessee has traded of spaces of a semi constructed building for IT space at IMT Manesar, Haryana. The assessee filed its return of income on 30.9.2012. The case of the assessee was selected for scrutiny and assessment u/s. 143(3) of the Act was completed on 30.3.2015 and made the following additions.

1	On account of disallowance of total Commission paid on booking of space	Rs. 1,23,87,897/-
2	On account of disallowance u/s. 40(a)(ia) of the I.T. Act of the interest payable and fit out charges received from Buyers	Rs. 4,69,31,575/-
3	On account of disallowance of amount paid towards Assured Return.	Rs. 29,31,312/-

3. Against the aforesaid assessment order, assessee appealed before the Ld. CIT(A), who vide his order dated 14.11.2019 by way of deleting the aforesaid additions, partly allowed the appeal of the assessee. Aggrieved with the aforesaid Ld. CIT(A)'s order, Revenue is in appeal before us.

4. We have heard both the parties and perused the relevant records.

5. At the time of hearing, Ld. DR relied upon the order passed by the AO. Per contra, Ld. Counsel of assessee submitted that Ld. CIT(A) has passed an elaborate and well reasoned order, which does not need any interference.

5.1 With regard to Ground No. 1 relating to addition of Rs. 1,23,87,897/- is concerned, AO observed that as per section 37 of the I.T. Act the assessee has

to prove that the expenditure has been genuinely incurred and has been incurred wholly and exclusively for the purposes of the assessee's business, which has not been proved before the AO, hence, AO treated Rs. 1,23,87,897/- on account of commission as bogus and added the same to the income of the assessee,

5.2 As regards, Ground No. 2 relating to addition of Rs. 4,69,31,575/- is concerned, AO observed that assessee has not deducted tax at source on interest of Rs. 4,69,31,575/- as shown in the balance sheet and to conceal these facts, the assessee has taken different stand at different point of time in order to escape from true transaction and assessee is squarely hit by the provisions of section 40(a)(ia) of the Act due to its manifest failure to comply with the mandate of the provisions of section 194A of the Act, therefore, AO disallowed the said expenditure and added back the same to the income of the assessee company,

5.3 As regards, Ground No. 3 relating to addition of Rs. 29,31,312/- is concerned, AO noted that during the assessment proceedings the assessee company has not produced any plausible reason and the cogent documentary evidence to substantiate its act of offering more assured return than earlier assured return of 12% on minimum investment of Rs. 27,50,000/- onwards through advertisement whereas it has also given assured return to the investor who have invested less than Rs. 27,50,000/- for which the assessee has failed to furnish/ produce any such documentary evidence and therefore, the AO disallowed the excess payment of Rs. 29,31,312/- on account of assured return and added back to the income of the assessee.

6. We find that Ld. CIT(A) has passed an elaborate and well reasoned order. As regards ground no. 1 is concerned, Ld. CIT(A) noted that the commission was paid in lieu of services of introducing the customers to the assessee and the commission has been paid only in the case of 56 customers out of 114 sold by the assessee. The payments were made through banking channel on which TDS

was deducted and deposited to government account and the commission agents confirmed receipt of commission and services rendered. They had shown the commission income in their return of income filed for the relevant years. Commission was also paid in subsequent years which was accepted by the AO and in fact more commission paid in the subsequent year for which AO does not have any objection and the assessment was completed u/s. 143(3) of the Act. AO made enquiries from various persons by issuing notices u/s. 133(6) and obtained confirmations and documents without giving any basis of doing so, however in response to section 133(6) some of the buyers have stated that the space was booked through broker but did not pay brokerage to broker. Hence, Ld. CIT(A) observed that AO's conclusion that payment of commission to brokers bogus, is not correct appreciation of facts and drawing conclusion simply on the basis of solitary statement of Sh. Ravinder Yadav without conducting any further enquiry, is not sufficient to accept the finding of the AO. In view of above, in our considered opinion, the Ld. CIT(A) has rightly deleted the addition in dispute, which needs no interference on our part, hence, we uphold the same and dismiss the Ground No. 1 raised by the Revenue.

6.1 As regards Ground No. 2 is concerned, Ld. CIT(A) noted that the ledger account of fit out charges payable was submitted before the AO but the AO ignored the submission and only went on the basis of grouping in the balance sheet. It is further noted that Ld. CIT(A) after going through the Statutory Auditor's Certificate which he reproduced at page no. 26 of the his order has observed that there appears to be a bonafide mistake by the Auditors and therefore, the addition cannot be sustained only on the basis of suspicion of the AO that the entire amount is interest payable. The finding of the AO is not backed by the other evidences which will lead to the conclusion of wrong doing of the assessee. Hence, Ld. CIT(A) has observed that the fit out charges cannot be treated as interest payable as sufficient material has been submitted before

AO which is on records. On examination of the balance sheet of the assessee, Ld. CIT(A) agree with the AR that it is evident from the balance sheet of the assessee of current year and that of preceding year that no loans of any kind was appearing in the balance sheet. The interest payable of Rs. 1,06,984/- was the amount of interest payable after deductions of TDS of Rs. 11,887/- which is clear from the TDS certificate submitted at page no. 91 of the paper book before the Ld. CIT(A). It is observed that the challan for deposit of TDs was on record before AO but the AO did not examine this. Therefore, the Ld. CIT(A) was right observing that TDS on interest payable of Rs. 1,06,984/- was deducted on deposited by the assessee, hence, he rightly deleted the disallowance of Rs. 1,06,984/- and regarding fit out charges, it is noted that relevant ledger account at the name of the person from whom fit out charges were received, have been submitted before AO. In the remand proceeding also confirmation from the parties, address were submitted. The AO did not make any adverse observation about the liability on account of fit out charges. Hence, Ld. CIT(A) observed that fit out charges received is part of the agreement signed with the customers who opted for fit out by the assessee. Therefore, simply on the basis of inadvertent mistake by the auditor by grouping certain liability in a different head in the balance sheet, cannot be the basis for sustaining the addition, therefore, in our considered opinion, the Ld. CIT(A) has rightly deleted the addition in dispute, which needs no interference on our part, hence, we uphold the same and dismiss the Ground No. 2 raised by the Revenue.

6.2 As regards Ground No. 3 is concerned, Ld. CIT(A) observed that all the necessary details were filed before the AO, however, AO observed that no plausible reason/cogent documentary evidences were submitted offering more assured return. It is noted that AO has made enquiry on this issue but did not find these expenses either unverifiable or bogus. The only grievance of the AO

that the assessee has given more assured return than it advertised initially. The assessee has filed confirmation of the parties of receipt of assured return alongwith agreement, details of TDS deducted. The payment has been made through banking channel on month to month basis. No defects has been found by the AO in these documents. On enquiry from some of the parties conducted by the AO, the parties have confirmed to have received assured return. In view of above, Ld. CIT(A) has observed that AO is not correct in questioning the business necessity of the assessee for offering more assured return than the advertised through initial advertisement and relied upon the decision of the Hon'ble Delhi High Court in the case of SA builders vs. CIT on 14.12.2016 wherein it has been held that once it is established that there was nexus between the expenditure and the purpose of the business, the Revenue cannot justifiably claim to put itself in the arm-chair of the businessman or in the position of the board of directors and assume the role of decide how much is reasonable expenditure having regard to the circumstances of the case. In view of above, in our considered opinion, the Ld. CIT(A) has rightly deleted the addition in dispute, which does not need any interference on our part, hence, we uphold the same and dismiss the Ground No. 3 raised by the Revenue.

7. In the result, the Revenue's appeal is dismissed.

Order pronounced on 04/03/2024.

Sd/-
(CHALLA NAGENDRA PRASAD)
JUDICIAL MEMBER

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

SRB

Copy forwarded to:-

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

Assistant Registrar