

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "G": NEW DELHI**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
AND
DR. B.R.R. KUMAR, ACCOUNTANT MEMBER**

**ITA No. 18/DEL/2022
Assessment Year: 2016-17**

DCIT, Circle 22(2), New Delhi.	<u>Vs</u>	Super City Developers Pvt. Ltd., Plot No. 6, Bharti Artist Colony, Preet Vihar, New Delhi-110092. PAN: AABCI5062L
APPELLANT		RESPONDENT
Assessee represented by	Shri C.S. Anand, Adv.	
Department represented by	Ms. Deepti Chandola, Sr. DR	
Date of hearing	29.02.2024	
Date of pronouncement	06.03.2024	

ORDER

PER KUL BHARAT, JM:

This appeal, by the Department, is directed against the order of the learned Commissioner of Income-tax (Appeals)-8, New Delhi, dated 05.06.2020, pertaining to the assessment year 2016-17. The Revenue has raised following grounds of appeal:

"1. "Whether in facts and circumstances of the case, the Ld. CIT(A) was right in allowing the submission of additional evidences by the assessee company without asking the remand report from the Assessing Officer"

2. *"Whether on the facts and circumstances of the case, the Ld. CIT(A) has erred in deleting the additions made by the Assessing Office of Rs. 3,31,19,681/- on account of current liabilities of trade payable outstanding at the yearend, merely relying on the additional evidences furnished by the assessee company at the time of appeal proceedings and ignoring the facts that the AO has made the addition as the assessee company failed to established the genuineness of source or income"*

3. *The appellant craves to be allowed to add and alter any fresh ground(s) of appeal and/or delete or amend any of the ground(s) of appeal."*

2. The only effective ground in this appeal is against deletion of addition of Rs. 3,31,19,681/- made on account of current liabilities of trade payable outstanding and the end of the year.

3. Facts giving rise to the present appeal are that the assessee is a company, engaged in the business of builder/developer residential complexes. The assessee filed its return of income on 15.10.2016 declaring total income at Rs. 24,11,390/-. The case was taken up for scrutiny assessment and the assessment u/s 143(3) of the Income-tax Act, 1961 (the "Act"), was framed vide order dated 22.12.2018. The AO during the course of assessment noticed that the assessee had claimed current liabilities of customers outstanding. The AO sought explanation from the assessee which was not found acceptable to the AO. He, therefore, made disallowance out of current liabilities amounting to Rs. 3,31,19,681/-. He further made addition of Rs. 59,72,259/- by invoking the provisions of Section 40(a)(ia) of the Act. Aggrieved against this the assessee carried the matter to the learned CIT(A), who

after considering the submissions, partly allowed the appeal. Thereby, the learned CIT(A) deleted the addition of Rs. 3,31,19,681/- and Rs. 59,72,259/-. Aggrieved, now the Revenue is in appeal against the deletion of addition of Rs. 3,31,19,681/- before this Tribunal.

4. Apropos to the grounds of appeal learned DR supported the assessment order and contended that the learned CIT(A) was not justified in deleting the additions in questions.

5. On the other hand, learned counsel for the assessee relied on the order of learned CIT(A).

6. We have heard rival submissions and perused the material available on record. The learned CIT(A) has decided the issue in ground nos. 2 & 3 of his order by observing as under:

“Ground No. 2: The appellant challenged the addition of Rs.1,01,33,397/- (forming part of Rs.3,31,19,681/- made u / s 68. Relevant paras of the appellant's letter dated 27/11 / 2019 are reproduced hereunder-

10. That on going through the contents of the assessment order, particularly the table appearing in para 4.5 of the assessment order , the assessee had come to know that the Id A.O. had arrived at such figure of Rs. 1,01,33,397/- by working out the difference between Rs.30,38,99,179/- and Rs. 29,37,65,782/-. Your honour will find that the figure of Rs. 30,38,99,179/- had been shown by the Id AO under the head "Receipt during the year" and figure of Rs. 29,37,65,782/- had been shown by the Id AO under the head "Repayment during the year".

11. That in this context, it is respectfully stated that the Id A.O. had mis-directed himself by presuming that during the year under consideration the assessee had received monies to the tune of Rs.30,38,99,179/- from certain persons and repaid monies to the tune of Rs.29,37,65,782/- to those persons. As a matter of fact, the amount of Rs.1,01,33,397/- was the difference between the total amount of Trade Payables as on 31.03.2016 amounting to Rs.4,86,74,889/- and as on 31.03.2015 amounting to Rs. 3,85,41,492/-. It may not be out of place to point out here that both these figures were appearing in NOTE 7: TRADE PAYABLES (forming part of detailed notes on financial statements for the year ended 31st March 2016) and the party-wise details thereof were clearly given in DETAIL NOTE 7: TRADE PAYABLES (forming part of detailed notes on financial statements for the year ended 31st March 2016). Should the Id AO carefully looked into it, he would not have treated the amount of Rs.1,01,33,397/-, as income from non-genuine sources and consequently not made such addition of Rs. 1,01,33,397/- u/s 68.

12. That it is clearly evident from the assessment order that the Id A.O. had not doubted the genuineness of the expenses incurred /claimed by the assessee, and also that the Id A.O. had neither required the assessee to furnish the confirmations from the suppliers, nor himself made direct inquiries from the suppliers. On such peculiar facts and circumstances, the Id A.O.'s action of making addition of Rs. 1,01,33,397/-deserves not to be affirmed. Hence, the addition of Rs. 1,01,33,397/- made u/s 68 deserves to be deleted.

5.1 Vide para 1 of its letter dated 02/06/2020, the appellant summarized its arguments relating to this ground of appeal.

5.2 I have carefully gone through the assessment order and the submissions made by the appellant. I have felt that perhaps due to lack of face-to-face communications, the Assessing Officer could not correctly analyze the facts of the case, which led to this addition of Rs. 1,01,33,397/-. After going through the Audited Financial Statements of the appellant, I have observed that the relevant details/data were provided in Note 7 and detailed Note 7 to the Audited Financial Statements. The amounts under reference were not representing the receipts of monies in the hands of the appellant, but were representing the balances remaining payable to various suppliers as on the

year end. In para 4 of the assessment order, the Assessing Officer has mentioned that "the assessee have only produced copy of the ledgers and has not submitted any document to establish the genuineness of the transactions". I am of the view that if the Assessing Officer was not satisfied with the ledger accounts he should have either asked the appellant to furnish confirmations from the suppliers or himself made direct enquiries from the suppliers. I have observed that nowhere in the assessment order, the Assessing Officer had mentioned that he had asked the appellant to furnish the confirmations from the suppliers and the appellant had failed to do so. I have also observed that nowhere in the assessment order, the Assessing Officer had mentioned that he had made direct inquiries from the suppliers and they had denied their such transactions and balances with the appellant. I find force in the Id. AR's argument that since the Assessing Officer had not doubted the genuineness of the expenses incurred by the appellant and also not carried out any inquiry regarding the transactions between the appellant and the suppliers, either through the appellant or directly from the suppliers, the Assessing Officer's action of making addition of Rs.1,01,33,397/- cannot be held to be justified. I am of the considered view that once the Assessing Officer had found no fault with the expenses incurred by the appellant and also chosen not to ask the appellant to furnish confirmations from the suppliers or directly make inquiries from the suppliers regarding their transactions with the appellant, the Assessing Officer's action of making addition of Rs. 1,1 ,33,397/- can not be approved & confirmed. The judicial pronouncements quoted by the Assessing Officer cannot be applied against the appellant because by not founding any fault with the expenses incurred by the appellant and simultaneously choosing not to ask the appellant to furnish confirmations from the suppliers or directly make inquiries from the suppliers regarding their transactions with the appellant, the Assessing Officer himself shut the doors for the scope of making such addition. Hence, I delete this addition of Rs.1,01,33,397/-. Thus Ground no. 2 is allowed.

6. Ground No. 3: The appellant challenged the addition of Rs.2,29,86,284/- (forming part of Rs.3,31,19,681/-) made u / s 68. Relevant paras of the appellants letter dated 27/11 / 2019 are reproduced hereunder-

That on going through the contents of the assessment order, particularly the table given in para 4.5 of the assessment order, the assessee had come to know that the Id AO had made an addition of Rs.2,29,86,284/- u/s 68. As per the table appearing in para 4.5 of the assessment order, the Id AO had arrived at such figure of Rs.2,29,86,284/- by working out the difference between Rs.59,71,54,020/- and Rs. 57, 41 ,67,736/- . Your honour will find that the figure of Rs.59,71,54,020/- had been shown by the Id A.O. under the head " Receipt during the year" and figure of Rs.57,41,67,736/- had been shown by the Id AO under the head "Repayment during the year".

14 That in this context, it is respectfully stated that the Id A.O. had mis- directed himself, by presuming that during the year under consideration, the assessee had received monies to the tune of Rs.59,71,54,020/- and repaid monies to the tune of 57, 41 /-. As a matter of fact, both such statements of the Id A.O. are factually incorrect. Various customers (who had made booking for the allotment of flats /units in the project under development) had been depositing the amounts with the assessee towards the purchase consideration in installments alongwith the Service Tax (as applicable thereupon). During the year under consideration, the customers had paid total amount of Rs.62,51,66,397/-, wherein the amount of Service Tax amounting to Rs.2,51,59,140/- was included. As such the Id A.O.'s version that the figure of Rs.59,71,54,020/-represented the total receipts during the year under consideration, is factually incorrect. The Id A.O.'s another

version that the figure of Rs.59,71,54,020/- represented the total repayments during the year under consideration is also factually Incorrect, in as much as this figure represented the amount which was transferred from the 'Advances from Customers Account' to the Profit & Loss Account for F.Y. 2015-16, as Revenue from Operations'.

15 That it may not be out of place to mention here that on the face of the Balance Sheet of the assessee, It was clearly mentioned in NOTE 8 (forming part of detailed notes on financial statements for the year ended 31 ^ (st) March 2016) that the figures of Advances from Customers as on 31.03.2016 was Rs.13,76,34,141/- and as on 31.03.2015 was Rs.11,46,47,133/-. The difference of such two figures

is Rs.2,29,87,008/-. For the sake of clarity, the details of Rs. 13,76,34,141/- is summarized as under:-

<i>Op. Balance as on 01.04.2015</i>	<i>11,46,47,133</i>
<i>Add: Receipts during F.Y. 2015-16</i>	<i>60,40,07,217</i>
<i>Gross amount</i>	<i>62,91,66,357</i>
<i>Less: Amount of Service Tax</i>	<i>2,51,59,140</i>
<i>Total</i>	<i>71,86,54,350</i>
<i>LESS: Amount refunded on cancellation of booking</i>	<i>68,53,197</i>
<i>Balance</i>	<i>71,18,01,153</i>
<i>LESS: Amount transferred to P & L A/c- as Revenue from operations</i>	<i>57,41,67,736</i>
<i>Closing Balance as on 31.03.2016</i>	<i>13,76,33,417</i>

Should the Id A.O. not let him misdirected by presuming that the figure of Rs.57,41,67,736/- represented the amount of repayment made by the assessee, and rather correctly understood that this much amount (as per AS-7) was transferred from the 'Advance from Customers Account to the 'Profit & Loss Account for F.Y. 2015-16, as Revenue from Operations', coupled with the fact that the assessee had been charging Service Tax from its customers and in-turn depositing Service Tax as well as Service Tax Returns with the Govt. of India, he would not had made such addition of Rs. 2,29,86,284/-. It may be worth bringing to your honour's kind knowledge that the assessments for immediately two preceding years i.e. A.Y. 2014-15 & A.Y. 2015-16 were completed under scrutiny u/s 143(3). It is a matter of record that the Id AO had not doubted the 'Advance from Customers from any angle whatsoever.

6.1 Vide para 2 of its letter dated 16/3/2020, on my directions dated 13/3 / 2020 the appellant furnished partywise details of 'Advance from Customers'. I have verified the details and data. Thereafter vide para 2 of ts letter dated 2/6 / 2020 the appellant summarized its arguments relating to this ground of appeal.

6.2 I have carefully gone through the assessment order and the Submissions made by the appellant. I have felt that perhaps due to lack of ace-to-face communications, the Assessing Officer could not correctly analyze the facts of the case, which led to this addition of Rs.2,29,86,284/- . I have verified the

contentions which were raised by the appellant in para 14 & 15 of its letter dated 27.11.2019. In para 4 of the assessment order, the Assessing Officer has mentioned that the assessee have only produced copy of the ledgers and has not submitted any document to establish the genuineness of the transactions" I am of the view that if the Assessing Officer was not satisfied with the ledger accounts he should have either asked the appellant to furnish confirmations from the customers" or himself made direct enquiries from the customers. I have observed that nowhere in the assessment order, the Assessing Officer had mentioned that he had asked the appellant to furnish the confirmations from the customers and the appellant had failed to do so. I have also observed that nowhere in the assessment order, the Assessing Officer had mentioned that he had made direct inquiries from the customers and they had denied their such transactions and balances with the appellant. On the basis of special facts of the case and also the surrounding circumstances, I have reached to the conclusion that the addition of Rs. 22986284/- made by the Assessing Officer cannot be sustained.

Surrounding circumstances

(a) receiving advances from customers is not an event which occurred for the first time because Rs.11,46,47,132/- was also appearing in the appellant's balance sheet containing figures as on 31/3/2016 and also as on 31/3/2015;

(b) the appellant had transferred Rs.57,41,67,736/- from 'Advances from Customers Account' to 'Profit & Loss Account for FY 2015- 16;

(c) the customers had been paying Service Tax over & above the installments;

(d) the total amount of Service Tax paid by customers was not a small amount, but was a huge amount of more than Rs.2.5 crores; and

(e) the figures of amount payable towards Services Tax as on 31/3/2015 (Rs.23,21,859/-) and as on 31/3/2016 (Rs.56,28,387/- show that the appellant might have discharged its liability towards Service Tax at Rs.2.75 crores (approx.) during FY 2015-16.

6.3 Further, I am of the opinion that the 'Advances from Customers' of such a big Group Housing Project, cannot be put at par either with the Share Application Money or with Unsecured Loan. The judicial pronouncements quoted by the Assessing Officer cannot be applied against the appellant

because by choosing not to ask the appellant to furnish confirmations from the customers or not making directly the inquiries from the customers regarding their transactions with the appellant, the Assessing Officer himself shut the doors for the scope of making such addition. Hence, I delete this addition of Rs.2,29,86,284/- Accordingly, Ground No. 3 is allowed.”

7. A perusal of the order of the learned CIT(A) would reveal that learned CIT(A) has passed elaborate order in coming to his conclusion. No flaw or infirmity has been pointed out by the learned DR in the order of learned CIT(A) so as to take a different view in the matter. Accordingly, order of learned CIT(A) in deleting the addition of Rs. 3,31,19,681/- is affirmed. Grounds taken by the Revenue are rejected.

8. Appeal of the Revenue is dismissed.

Order pronounced in open court on 6th March, 2024.

Sd/-
(DR. B.R.R. KUMAR)
ACCOUNTANT MEMBER

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

MP

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI