

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

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER  
AND  
SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

**ITA No. 1712/DEL/2023  
Assessment Year: 2013-14**

<b>DCIT, Central Circle-1, Noida.</b>	<u>Vs</u>	Eldeco Infrastructure & Properties Ltd. 201-212, Splendor Forum, 2 <sup>nd</sup> Floor, Jasola District Center, New Delhi-110025. <b>PAN- AAACE8177D</b>
<b>APPELLANT</b>		<b>RESPONDENT</b>
<b>Assessee represented by</b>	Shri Rohit Tiwari, Adv.; Ms. Tanya, Adv.; Ms. Shivani, Adv; & Shri Jaind Kumar Jaiswal, Adv.	
<b>Department represented by</b>	Shri Vivek Kumar Upadhyay, Sr. DR	
<b>Date of hearing</b>	13.02.2024	
<b>Date of pronouncement</b>	01.05.2024	

**ORDER**

**PER M. BALAGANESH, AM:**

This appeal, by the Revenue, is directed against the order of the Commissioner of Income-tax (Appeals), Kanpur-4, dated 06.03.2023, arising out of assessment order dated 22.03.2016, passed by the DCIT, Central Circle, Noida u/s 143(3) of the Income-tax Act, 1961, pertaining to the assessment year 2013-14.

2. The only issue to be decided in this appeal is as to whether the Id. CIT(A) was justified in deleting the addition of Rs 89,00,000/- made on account of cash seized by CBI on 10.6.2012 from the locker room of the assessee in the facts and circumstances of the case.

3. We have heard the rival submissions and perused the materials available on record. The assessee company is engaged in the business of

development of residential complexes and commercial malls. The assessee company is following Percentage of Completion Method (POCM) of accounting for recognizing the expenses and revenue under a project. The return of income for the Asst Year 2013-14 was filed by the assessee company on 30.9.2013 declaring total income of Rs 22,39,21,281/-, which was later revised declaring total income of Rs 9,72,36,688/-. During the year, Central Bureau of Investigation (CBI) seized Rs 89,00,000/- cash on 10.6.2012 from the locker room of the assessee company from its corporate office at 201-12, Splendor Forum, Second Floor, Jasola District Center, New Delhi. The assessee was asked to furnish the source of such cash found in locker. The assessee explained that it had sufficient cash balance in its cash book as on 10.6.2012 of Rs 98,38,316/- and that out of the same, a sum of Rs 89,00,000/- was kept in the locker room which was found and seized by CBI. To support this argument, the assessee furnished the cash book for the period 1.4.2012 to 30.6.2012 before the Id. AO along with documentary evidences for accumulation of cash. It was explained that assessee company received cash from customers against their booking of flat/ property and also on account of maintenance and other charges from the customers of various projects on daily basis. It was submitted that all the receipts are revenue receipts and have been properly recorded in the books of accounts of the assessee company and duly offered to tax in the return of income. The Id. AO however disregarded the submissions of the assessee and proceeded to treat the cash found and seized by CBI in the sum of Rs 89 lacs as income of the assessee. The Id. CIT(A) sought for a remand report from the Id. AO. In the remand proceedings, the assessee furnished the following documents before the Id. AO:-

- a) Copy of cash book for the period 1.4.12. to 30.6.12
- b) Copy of cash book of subsidiary companies running from the same premises for the period 1.4.12 to 30.6.12

- c) Details of cash received from customers against their units specifying their unit numbers, their addresses , their PAN for the period 1.4.12 to 30.6.12
- d) Copy of ledger account of the said customers from whom the cash was received showing that they are old customers and have regularly paid their instalments against units allotted to them
- e) Details of project –wise funds received by the assessee company on account of booking and maintenance charges from customers
- f) Copy of receipts issued to customers against cash paid by them

4. It was submitted that as on 10.6.2012, the company had cash of Rs 72,06,636/- in its books of accounts and cash of Rs 26,31,380/- belonging to other subsidiary companies operating from the same premises. Despite the aforesaid documents placed on record, the Id. AO stated that the assessment order did not contain any deficiencies and prayed for upholding of the addition made in the assessment.

5. The Id. CIT(A) analysed the cash book of the assessee and the subsidiary companies and tabulated the availability of cash balance as on 10.6.2012 and the entire modus operandi adopted by the assessee and observed as under:-

*"6.6 I have carefully perused the findings of Ld AO in the assessment order and the submission of the appellant in the appeal and further remand report of Ld AO and counter of Ld. AR on the same In the assessment order, Ld. AO observes that the assessee was asked to furnish explanation regarding the source and nature of cash of Rs 89,00,000/- seized by CBI and the appellant company explained that it received cash from customers as also the cash was withdrawn from the bank accounts of the company and that the appellant provided cash as well as bank books for first quarter of FY 2012-13 Ld AO observes that opening balance of the appellant company as on 01.04.2012 was only Rs. 12,63,959/- and the same gradually increased to Rs 96,12,179/- on 11 06 2012. He observes that during this period ie from 01.04 2012 to 11.06.2012 no heavy withdrawals of cash have been seen in the cash*

*book and the heavy accumulation of cash was shown as deposits by the customers. Ld AO observes that the deposits made by the customers can be deposited in the bank account on daily basis or on some regular basis. In the light of this discussion, Ld. AO has considered amount of Rs 89.00.000/- seized by the CBI on 10 06 2012 as unexplained cash and hence added the same as deemed income of the appellant.*

*In the remand proceedings, Ld. AO submits that from the perusal of cash book/ bank book it was held in the assessment order that opening balance as on 01.04 2012 was Rs 12.63,959/- which was increased to Rs 96.12.179/- on 11:06 2012 in a very short span and there was no heavy withdrawal of cash from the bank as is evident from the cash book Thus heavy accumulation of cash was shown by the appellant company from the deposits made by the customers. In view of this it was held in the assessment order that amount of Rs. 89,00,000/- seized from locker room of company was unexplained cash. Ld. AO observes that from the perusal of the paper book filed by the appellant, it is not clear as to which evidence/ submission/ detail filed during the assessment proceeding has not been considered while framing the assessment order He observes that the assessment order has been passed after considering the details filed! available on the record and affording sufficient opportunities to the assessee company*

*6.7 On the other hand Ld AR submits that during the year under consideration, search proceeding of the Central Bureau of Investigation (CBI) was conducted on the office premises of the company at 201-212. Splendor Forum, Jasola Distt. Centre New Delhi on 04.06.2012 and the search party noted that the company had two safe lockers which were opened by them on 10.06.2012 and the safe lockers had cash and original documents of registry papers, the officers counted the cash and then seized cash of Rs. 89,00,000/- without assigning any reason on 10.06 2012. Ld AR submits that later on, in the court proceedings (Special Judge-CBI) the CBI didn't found anything against the company and had given its "No objection for release of Cash and accordingly, the court released the said amount of Rs 89.00 Lacs to the company vide court order dated 01.12.2016, as an evidence of the same, copy of court order has been enclosed*

*6.8 Ld. AR submits that during the course of assessment proceedings, the Ld AO asked the company to prove the source of cash of Rs 89 00 Lacs found in the office premises of the company and the appellant company explained that is the business of real estate and is developing various residential and commercial projects which are in progress More precisely, the company was developing residential projects at Sonipat. Panipat in the state of Haryana, Neemrana in the*

*state of Rajasthan, Ludhiana in the state of Punjab, apart from other locations. The company sold its units mostly on construction linked plan (CLP) basis. Thus, the Company receives funds from its customers on account of booking amount and installments at regular intervals against booking of their flats/units. The booking amount and thereafter, installments were generally received in cheques however in some cases booking amount and installments also received in Cash for which proper receipts were issued. Ld. AR submits that various customers pay amount by cheque, bank transfer and some of them also pay in cash and the company acknowledged all the funds received either through cash or cheque by proper receipts. These funds were collected at regular intervals on month to month basis. Thus one of the source of cash of the company is installments received from customers on account of units booked by them for various real estate projects. The cash received from customers was duly recorded in the books of accounts of the company.*

*6.9 Ld AR further submits that apart from this source of cash, another source of cash of the company is on account of Maintenance and Electricity charges received from various customers of completed projects of the company. He states that the company had delivered various residential group housing projects in the past and provides maintenance and utility services to the residents of such housing projects. The company collects maintenance charges at fixed rate on the basis of flat area sold to customers from residents. These maintenance charges are collected on monthly basis from all the residents of various projects. Since these are small amounts, hence, residents pay maintenance charges generally in cash and to some cases by cheque. Thus another source of cash of the company is receipt of maintenance charges from residents of various real estate projects. L.d. AR submits that the company issues cash receipts to each resident and the cash received from residents is duly recorded in the books of accounts of the company.*

*6.10 It is submission of Ld. AR that during the course of assessment proceedings the appellant had filed copy of cash book of the company along with the detail and documentary evidence for cash collection made by it. It was explained to the assessing officer that the company received cash from customers against their booking of flats/units and also on account of maintenance and other charges from the customers of various completed projects on daily basis. All the receipts from customers are revenue receipts and have properly been recorded in the books of account of the company. As such the cash seized by CBI was declared cash of the company and was properly recorded in books of accounts of the company.*

6.11 it is submission of Ld. AR that apart from this source of cash, the company has various other group/subsidiary companies on the same address and all the business activities of these companies are performed/executed from the searched premise only Le 201-212 Splendor Forum, Jasola District Centre, New Delhi. The finance of these companies is also handled from this premise only These group companies also have cash in hand as per their books of accounts which was also lying in the safe deposit lockers During the course of assessment proceedings, detail of cash in hand of the associates/group companies was also furnished to the assessing officer

6.12 According to the books of accounts of the company cash in hand as on 10.06 2012 was as under:

Sr. No.	Particulars	Cash in hand as on 10.06.2012 (Opening)
1	Eldeco Infrastructure & Properties Ltd	72,06 936
2	Cash of Various Subsidiaries kept at same premises	26,31.380
3	Total Cash Available	98 38,316
4	Cash seized by CBI	89,00,000/-

Particulars	April 1012	May 2012	10 <sup>th</sup> June 2012	Total
Opening Balance as on 01.01.2012	1,263,959	2,784,594	7,768,938	1,263,959

*Inflow of cash*

Receipts from Customers against Real Estate Projects of the Co.as per Cash Receipts issued	5,405,506	11,135,138	1,330,160	17,870,804
Maintenance Receipts Various customers as per cash receipts issued	2,400,696	2,884,368	693,968	5,979,032

*Less: Out flow cash*

<i>Deposit in Banks</i>	<i>5,715,567</i>	<i>10,035,162</i>	<i>1,586,130</i>	<i>17,336,859</i>
<i>Paid to Subsidiary Welcome Infra Developers</i>	<i>570,000</i>	<i>0</i>	<i>0</i>	<i>570,000</i>
<i>Closing Balance</i>	<i>2,784,594</i>	<i>6,768,938</i>	<i>7,206,936</i>	<i>7,206,936</i>

*6.13 in support of cash received from customers, copies of following documents was furnished before the assessing officer*

*i. Detail of "Receipts from Customers against Real Estate Projects giving their in, the Name of the Party, its address, PAN, Amount received in cash, date of receipt, Cash receipt number issued to him, real estate project name, unit no booked by party etc*

*ii. Copies of extracts of Audited balance Sheet as on 31.3.2012 of subsidiary companies showing Cash in Hand available with them*

*6.14 Ld AR submits that almost all the parties who had paid installments in cash in this period are existing customers of the company who had booked flats/units in preceding years and had deposited substantial part payments in preceding years which is apparent from opening credit balance appearing in their ledger accounts*

*Thus the summery of source for cash available with the company as on 10:06 2012 was shown as under*

<i>Summary of cash as on 10.06.2012</i>	
<i>Particulars</i>	<i>Amount (Rs.)</i>
<i>Cash of EIPL as stated above</i>	<i>7,206,936</i>
<i>Add cash in hand of subsidiary companies</i>	<i>2,631,380</i>
<i>Available at office of the company</i>	
<i>Total available cash in hand as on 10.06.2012</i>	<i>9,838,316</i>

*6.15 Ld AR submits that during the course of assessment proceedings, all the documentary evidences such as Copy of cash book of the*

*company and subsidiary companies, party ledger accounts, copies of receipts issued to them, customers name. address contact numbers, copies of accounts, confirmation etc etc was furnished and copies thereof have further been furnished in paper book submitted before the undersigned*

*6.16 It is submission of Ld AR that the company M/s Eldeco Infrastructure & Properties Ltd (EIPL) had explained cash in hand of Rs 98,38,316/- on 10.06.2012 as per its books of accounts which was found in the office premises of the company by the CBI The entire cash was recorded in the books of accounts of the company and thus was declared cash. Ld AR submits that the Ld. Assessing officer has not objected to the submission and documentary evidences of the appellant. In fact, the assessing officer had not found any discrepancy in any of the document submitted by the appellant No defect of any kind whatsoever, was pointed out and brought on record by the assessing officer In such a situation, allegations of the Ld AO, without rejecting the documents and evidence of the appellant on the one hand and sustaining his allegation without producing any document/evidence in its support, have no merit and liable to be quashed Lo AR further submits that the Le. AD has on surmises an conjectures made addition of Rs 89,00 000 as unexplained cash, therefore the actions of Lo AO in making this addition is erroneous and unjust*

*6.17 From the facts of the case it has been found that source of the cash seized by CBI from 201-212 Splendor Forum, 2nd Floor, Jasola District Centre. New Delhi amounting to Rs 89,00,000/- was well explained and Ld. AR furnished requisite documentary evidences and thus discharged onus of the appellant to give evidences of source of this cash amount. Ld. AO did not conduct any inquiry from which it may emerge that the deposits made by flat allottees are not explained in the assessment order Ld. AO has not questioned the opening cash balance of Rs. 12.63.959/- and the only observation which is made against the appellant is that heavy accumulation of cash has been shown by the assessee from the deposits made by the customers and that the deposits made by the customers can be deposited in the bank account and daily are on some regular basis However Ld AD cannot direct the appellant as to in which manner, it has to run its business*

*6.18 Ld AR also furnished decision of Hon'ble Court of Sh Gurdeep Singh Special Judge (PC Act). CBI-05, New Delhi District, Patiala House Courts dt 01:12 2016, in which Hon'ble Special Judge has directed to release the cash amount of Rs 89,00,000 and no such findings have been given in the judgment which may challenge that the source of the seized cash amount was questionable*

*6.19 Since the source of cash amounting to Rs. 89,00,000/- seized by Central Bureau of Investigation from the corporate office of the appellant is well explained, the addition made on account of deemed income (supposedly u/s 69A of IT Act) cannot be sustained*

*6.20 Looking to the facts and circumstances of the case, the addition of Rs. 89,00,000/- is hereby deleted and relief is allowed to the appellant. The grounds of appeal are adjudicated accordingly."*

6. We find that the Id. CIT(A) had elaborately examined the entire issue in dispute and none of the aforesaid factual findings were controverted by the revenue before us. This is a classic case of Id. AO not willing to understand the accounting model and the books of accounts of the assessee not once but twice by holding that the assessee had not explained the cash of Rs 89 lacs found and seized from its locker room by CBI. It is very strange to understand as to how a senior level officer like Chief Commissioner of Income Tax (CCIT) had accorded his authorization u/s 253(2) of the Act to file appeal before this Tribunal in the instant case. Probably both the Id. AO and Id. CCIT got carried away by the indulgence of the CBI in the instant case. However, subsequent to the completion of the assessment, the Hon'ble Special Judge, CBI-05, New Delhi District, Patiala House Court vide order dated 1.12.2016 had directed to release the cash amount of Rs 89 lacs to the assessee on the ground that sources for the cash seized is properly explained by the assessee. This has been duly taken note of by the Id. CIT(A) while granting relief by making his observations reproduced supra. The Id. CCIT atleast should have taken cognizance of the fact that prior to the grant of authorization u/s 253(2) of the Act, the CBI Court had already directed the release of cash seized to the assessee. In our considered opinion, this is a frivolous appeal filed by the revenue and it is a fit case for imposing cost on the revenue. But we refrain to do so considering the arguments advanced by the Id. DR before us. Hence we do not deem it fit to interfere in the order of

the Id. CIT(A) in the instant case. Accordingly, the grounds raised by the revenue are dismissed.

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

Order pronounced in open court on 01.05.2024.

**Sd/-**  
**(AMIT SHUKLA)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(M. BALAGANESH)**  
**ACCOUNTANT MEMBER**

**Dated:01.05.2024.**

\*MP\*

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT, NEW DELHI