

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH “H”: NEW DELHI**

**BEFORE SHRI G.S. PANNU, VICE PRESIDENT
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA No. 5815/DEL/2019
Assessment Year: 2016-17

Income-tax Officer,
Ward-27(2), New Delhi.

Vs M/s Urban Land Management
Pvt. Ltd.,
22, DDA Flats, Shivalik Road,
Malviya Nagar,
New Delhi-110017.

PAN: AABCU4986D

(Appellant)

(Respondent)

Assessee by : Dr. Rakesh Gupta, Adv. ;
S/Shri Shrey Jain, Deepesh Garg,
& Somil Agarwal, Advocates

Department by : Ms. Sapna Bhatia, CIT(DR) &
Shri Amit Katoch, Sr. DR

Date of hearing : 05.04.2024

Date of pronouncement : 04.06.2024

ORDER

PER ANUBHAV SHARMA, JM:

The Revenue has come in appeal against the order dated 08.04.2019, for the assessment year 2016-17, passed by the Commissioner of Income Tax (Appeals)-9, New Delhi (hereinafter referred as “learned First Appellate Authority” or in short “FAA”), in appeal no. 10326/18-19, arising out of assessment order dated

16.12.2018 u/s 143(3) of the Income-tax Act, 1961 (hereinafter referred as the “Act”), passed by the ACIT, Circle 5(1), New Delhi, hereinafter referred to as the “AO”).

2. The Revenue has raised following grounds of appeal for adjudication:

“1. "On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the disallowance of Rs. 12,32,767/- made u/s 14A of the Act r.w.r.8D."

2. "On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs.8,98,98,388/."

3. "On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in directing to grant relief at 1/4th out of disallowance of interest of Rs.41,74,799/- made by the AO."

4. "On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the disallowance Rs.2,43,45,132/- holding the same revenue expenses " of as

5. "On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the disallowance of Rs.1,00,000/- made in respect of Pollution Penalty levied by the Haryana Government."

6. "On the facts and circumstances of the case and in law, the learned CIT(A) has erred in deleting the disallowance of Service-tax Penalty of Rs.8100/- and late fee of ESIC of Rs.415/-."

7. "The appellant craves leave to add, alter or amend any/all of the grounds of appeal before or during the course of the hearing of the appeal."

3. Heard and perused the records. The findings are as follows;

3.1 **Ground No. 1:** The assessee company is a real estate developer of an integrated township, having total area of 60905 sq. meters at village Sahbajpur

Khalsa, Sector 25, District Rewari by the name of Amangani. The assessee company was the developer and one M/s Jai Buildwell Pvt. Ltd. was the licensee of the project. The assessee company was holding 4990000 shares of M/s Jai Buildwell Pvt. Ltd. out of their total issued shares of 70,90,000. During the year under consideration the assessee filed return declaring NIL income after setting off of current business income of Rs. 1,24,45,365/- with brought forward business loss. The case of assessee was selected for complete scrutiny under CASS and relevant notices u/s 143(1) and 142(1) were issued. The AO questioned the assessee as to why disallowance u/s 14A read with Rule 8D as made in A.Y. 2015-16 be not applied to the present assessment year, for which assessee had claimed that the said addition was deleted by the learned CIT(A)-9, New Delhi vide order dated 18.10.2018. However, AO made addition by disallowance of Rs. 12,32,767/- which has been deleted by the CIT(A) by relying settled proposition of law that as there is no exempt income no disallowance can be made. Learned DR has relied the order of AO.

3.2. A perusal of the order of the CIT(A) shows that admittedly, there was no dividend income during the year. The ld. AO had made addition on the basis of the Hon'ble Supreme Court decision in the case of *Maxopp Investment Ltd. vs. CIT (2018) 91 taxmann.com 154 (SC)* and the CBDT Circular No.05/2014 on the basis of 0.5% of the average investments ignoring that there was no exempt

income claimed during the year. The CIT(A), relying the judgement of the Hon'ble Delhi High Court in the case of *Cheminvest Ltd. vs. CIT (2015) 378 ITR 33 (Del)* has given the relief to the assessee and we find no fault in the same in the light of the settled provisions of the law and in the absence of exempt income no disallowance can be made u/s 14A of the Act. Thus, there is no merit in ground no.

1.

4. **Ground No. 2:** Next the AO had made addition to the profit allegedly less accounted for from the project. The AO observed that in previous F.Y. 2015-16 the assessee company has adopted the percentage of completion method (PCM) as per AS-7, for recognizing revenue. As per Note 22 of the profit & loss account a sum of Rs. 30,30,28,269/- has been booked @ 30% as sale of services against total receipt of Rs. 101,00,94,233/-. The AO had called for the response of the assessee on the basis that as per the Project Report uploaded with AO, the total cost of the Project has been shown as Rs. 228.17 crores. As per Architect's Certificate, uploaded by the assessee company, providing the estimated total cost incurred as on 31.03.2016 in the report was Rs. 88.71 crores. The AO, accordingly, concluded that percentage of completion of the project was 38.88% and not 30% as computed by the assessee company in their financial statements. Accordingly, an addition of Rs. 8,98,98,388/- was made by the AO being the difference of Rs. 39,29,26,657/-

less 30,30,28,269/-. The CIT(A) dealing with this issue observed in paras 5.11 & 5.12 as follows and deleted the addition.

“5.11 Considering the facts of the case as narrated above. It is noted that the AO has not disputed the cost incurred at Rs.88.71 crores till the balance date of 31.03.2016, but he has reduced the project cost from Rs.300 crores to Rs. 228 crores by denying certain expenditures to be included as presented in the table above and in turn the AO has in effect disputed the estimated project cost at Rs.300 crores duly certified by the architect M/s DFA consultant Pvt.Ltd.

It is not the case that the estimated project cost has not been prepared on the basis of guidance note on accounting for Real Estate transactions (Revised 2012) and AS-7 applicable in this regard. In fact the estimated project cost prepared by adopting the same guidance note and accounting standard during previous year 2014-15 relevant to AY 2015-16 was duly accepted by the revenue (AO). It is also not the case that there is infirmities in the certificate issued by the architect M/s DFA consultant Pvt. Ltd.

5.12 In the given factual matrix of the case and my detailed deliberation as above, and careful consideration of all relevant factors and also the judicial precedents relied by the Appellant, I find that the percentage of completion made by AO at 38.88% is not justified and accordingly he is directed to accept the percentage of completion of the project at 30% as submitted by the Appellant which is based on guidance note and accounting standard. Thus, this ground of appeal is decided in favour of the appellant.”

4.1 In this regard it comes up that the assessee had calculated the project cost by including non-refundable security deposit, EDC and IDC aggregating to Rs.300 crores whereas the AO excluded these from the cost of project. It further comes up that there is no dispute with regard to the fact that the assessee had consistently followed the PCM and accounting of the project has been done as per the guidance note of accounting for real estate transactions. Similar treatment was done to these

costs like non-refundable security deposit, etc. in AY 2015-16 which was accepted by the Revenue. The CIT(A) has taken into consideration the fact that if the project cost along with these expenses have been accepted for AY 2015-16 then, there is no reason to deviate in the present assessment year. Thus, we are of the considered view that by changing the percentage of completion of the project from 30% to 38.88%, the AO had erroneously disallowed certain expenditures and merely taking into account the construction cost of Rs.228 crores had disturbed the percentage of completion method of assessee. Otherwise, the issue being of revenue neutral is covered in favour of the assessee by the judgement of the Hon'ble Supreme Court in the case of *CIT vs. Realest Builders and Services Ltd. (2008) 307 ITR 202 (SC)*. Thus, there is no reason to interfere in the findings of the Id.CIT(A).

5. **Ground No.3;** It comes up that the AO had made a disallowance on account of processing fee and bank charges paid to Bank of Baroda considering the same to be prior period expenses. The assessee had put up a case that these processing fee and bank charges are in regard to term loan taken for the project and the same was established by way of copy of agreement with the concerned bank. The CIT(A) has amortized these expenses rightly as the expenditures in case of real-estate development projects are being booked in specific manner, i.e.,

percentage of completion method. We are inclined to accept the same and there is no error in the findings of the Id.CIT(A).

6. **Ground No.4:** The issue arises out of deletion of the disallowance of Rs.2,43,45,132/- being the marketing and administration expenses disallowed by the AO on the basis that the business did not commence. As a matter of fact, the assessee is in the business of real-estate. There is no dispute with regard to the genuineness of the expenditure. The AO had formed an opinion that as the assessee is engaged in development of integrated residential projects, all expenditures relating to the project should be debited to the work-in-progress account until completion of the project. However, the same is not sustainable as following the 'guidance note on accounting of real-estate transactions', the assessee has claimed expenditures and the same is certainly falling u/s 37 of the Act. Thus, there is no error in the findings of the Id.CIT(A).

7. **Grounds No.5 and 6;** Being connected these grounds are taken up together. It comes up that the disallowance has been made in regard to deletion of pollution penalty, service tax penalty and ESIC late fees. The Id.CIT(A) has considered these to be not penal in nature and we consider it appropriate to rely the following findings of Id.CIT(A) in paras 9.2 and 9.3:-

“ 9.2 I have perused the facts of the case and submission of the AR of the appellant. It was noted that the amount paid to “ Haryana Pollution

Control Board “ is for violating pollution standard as laid down by the Hon’ble “ National Green Tribunal, New Delhi”, accordingly having regard to the ratio of the decision of the Hon’ble Calcutta High Court in the case of Shyam Sel Ltd Vs. DCIT (supra) and that of P& H High Court in the case of CIT Vs. Hero Cycles Ltd (supra), addition of Rs1,00,000/- pollution penalty is deleted.

9.3 Regarding service tax penalty of Rs.8,100/- and ESIC late fees Rs.415/-, I observed that those payments are not penal in nature are incurred for late deposit of service tax and ESIC . Accordingly following the decision of the Hon’ble Delhi Tribunal in the case of Dy. CIT v. Messee Dusseldorf India (P.) Ltd (supra), addition of Rs. 8,415/- is deleted. Ground No. 6 of the appellant is allowed.

8. In the light of the aforesaid, the grounds raised by the Revenue have no substance. **The appeal of the Revenue is dismissed.**

Order pronounced in open court on 04.06.2024.

Sd/-

**(G.S. PANNU)
VICE PRESIDENT**

Sd/-

**(ANUBHAV SHARMA)
JUDICIAL MEMBER**

Dated, 04th June, 2024.

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Copy forwarded to:

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

**ASSISTANT REGISTRAR
ITAT, NEW DELHI**