

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

**BEFORE SHRI G. S. PANNU, VICE PRESIDENT AND
MS. MADHUMITA ROY, JUDICIAL MEMBER**

**I.T.A. No. 4964/Del/2014
(Assessment Year : 2010-11)**

Income Tax Officer,
Ward – 12(2),
C.R. Building,
New Delhi

Vs. M/s. Goldenland Developers
Ltd., 3-B, LIG Flats, Rajouri
Garden Extn. New Delhi-27

PAN: AABCG 5825 B

(Appellant)

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(Respondent)

Appellant by : Dr. Rakesh Gupta, Adv. And
Shri Deepesh Garg, Adv.
Respondent by : Ms. Parul Singh, Sr. D.R.

Date of Hearing 27.06.2024
Date of Pronouncement 08.07.2024

ORDER

PER MS. MADHUMITA ROY – JUDICIAL MEMBER :

The instant appeal filed by the Revenue is directed against the order dated 30.06.2014 passed by the Ld. Commissioner of Income Tax (Appeals) – XV, New Delhi under Section 250 of the Income Tax Act, 1961 (hereinafter referred as to 'the Act') arising out of the order dated 25.03.2013 passed by the ITO, Ward – 12(2), New Delhi under Section 143(3) of the Act for Assessment Year 2010-11.

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2. The brief fact leading to the case is this that the assessee is a developer in real estate project in the state of Orissa and Andhra Pradesh mainly in low cost group housing societies for sale. The assessee has been receiving cash advances from customers towards plots and land and low cost housing. During the year under consideration, the assessee received an amount of Rs.7,09,87,186/- in cash and Rs.89,55,697/- through cheques. The AO not having been convinced with the genuineness of the cash components comprising of small sums of advances received from several persons, particularly the creditworthiness of the persons made the advances mainly the lenders and farmers of remote areas, the advance received of Rs.7,09,87,186/- made in cash has been added to the total income of the assessee as unsecured cash under Section 68 of the Act which was in turn deleted by the Learned CIT(A). Hence, the instant appeal before us.

3. At the time of hearing of the instant appeal, the Learned Counsel appearing for the assessee submitted before us that the issue is squarely covered in assessee's own case by and under the common order passed by the Co-ordinate Bench on 31.05.2024 in the case of ITA Nos.2106 & 2107/Del/2022 for A.Ys.2006-07 & 2007-08 whereby and whereunder, the Learned AO has been directed to examine and verify the details of the depositors in the context of provision of Section 68 of the Act and to pass order accordingly. Before us, the Learned Counsel appearing for the assessee prayed for the same relief which has not been controverted by the Learned DR with all her fairness. We have further perused the order

passed by the Learned CIT(A). We find that while granting the relief, the Ld. CIT(A) passed order with the following observation:

“6. I have carefully considered the facts of the case in the light of the submissions made by the appellant and applicable law in this regard. Accordingly, my decision on various grounds of appeal is as under:

6.2 It is evident that the appellant is developing real estate projects in the states of Orissa and Andhra Pradesh, a fact duly endorsed by the Ld. AO. in the impugned order. These real estate projects are low cost housing projects, for which necessary approval from the State Governments have also been obtained. The appellant filed before me certificate of commencement of business dated 09.01.1998 and the approval from Berhampur Urban Development Authority (BDA), for approval of the project. During the period from firm the firm's incorporation to 24.07.2000, the appellant did not collect any deposit from the public. No land was purchased either. Thereafter, the appellant started purchasing the land from agriculturists and agents were appointed on behalf of the company to purchase agricultural land. Such agricultural lands were converted into residential usage, for which approval from local development authority, such as BDA was obtained. Such projects also require environmental approval, if the project cost exceeded Rs.50 crores.

In addition, the appellant also filed before me the permission for construction accorded under Orissa Municipal Act 1950 by the Municipal Officer, Kendrapara and the issue of permission to lay out plan by Secretary, Kendrapara Regional Improvement Trust (KRIT), Kendrapara. Relevant project documents were also furnished. I find that the Ld. AO, in the impugned order, on the basis of the above documents, has endorsed that the appellant is developing a real estate project in the states of Orissa and Andhra Pradesh. Therefore, the genuineness of the project per se is in no doubt.

6.3 At present, the appellant is carrying out the following projects:

(i) Office building at Kendraparahaving plot area of 3,661 square feet;

(ii) Office building at Charichhaka having plot area of 8,323.80 square feet;

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(iii) Golden villa Phase-2, Duhuria, Kendrapara- Plot Area-175,111.20 square feet for 80 plots;

(iv) Golden Plaza, Commercial Complex at Kasoti, Kendrapara-Plot area- 20,345.50 square feet;

(v) Golden Villa Phase-I, Kajala, Kendrapara - the plot area is 2,62,013.40 square feet;

(vi) Golden Central Plaza and Central Park, Balugaon - Plot area of 76,792.50 square feet;

(vii) Golden House, Berhampur - Plot Area 12,280 Square feet;

(viii) Golden Park Plaza, Gopalpur- Plot Area - 39,860.90 square feet;
and

(ix) Golden City, Duplex Project, Naharkanta - Plot Area-56,128 square feet.

6.4 The appellant was asked to furnish the accounting treatment in respect of sales and recognition of revenue. It was informed that the revenue from sale of plots of land for is recognised on transfer of legal title of the property in accordance of with Accounting Standard 9 (AS 9) on Revenue Recognition issued by Institute of Chartered Accountants of India (ICAI), for which cost incurred is apportioned, based on sold area and total saleable area, to the plots sold and charged to P&L A/c as cost of sale. The remaining cost is treated as work in progress. It was informed that till A.Y.2010-11, i.e. the current year, the appellant had not booked any revenue and only when the developed plots were sold on receipt of full consideration, these were registered in the name of customers and for the first time, revenue was recognised in the A.Y.2011-12.

Regarding recognition of revenue on sale of group housing flats, the appellant follows percentage of completion method, according to Accounting Standard 7 (AS-7) and Guidance Note on Real Estate Accounting, both issued by ICAI. It was informed that in view of this, from A.Y.2012-13, revenue is being booked as per AS 7. In view of the

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above facts, the deposits received by the appellant can be held to be only in the nature of 'Advances against purchases'.

6.5 Keeping in view the above facts, there is no inconsistency in the appellant's accounting policy for recognition of revenue. The short point is that the appellant had received deposits from over 1795 depositors during the year, which included 1188 new depositors from whom an amount of Rs.5,66,18,261 was received, while from the existing customers, from whom deposits were received in earlier years numbering 607, further amount of Rs.1,43,68,925 was received during the current year. There is no doubt that such payments are not out of the scope of Section 68. However, in order to hold whether such cash credits are unexplained or not, it will be unreasonable to conduct enquiry from all customers at one point of time and a judicious view is called for in the matter. I find that even the Ld. AO himself had carried out enquiry from 50 depositors, chosen on random basis, by issue of notice under Section 133(6). No adverse observation was made by the Ld. AO, except the fact that he was not convinced as to why majority of the deposit amounts were in cash, while in his view most of the villages have banking facilities these days. I find that in the affidavits submitted by these depositors, it has been mentioned that their source of income is agricultural income/cultivation, while those who had PAN number had given the same. The AO was, however not satisfied with the creditworthiness of such depositors. However, no further enquiries were conducted by the AO nor has the AO confronted the appellant about the results of these enquiries, which implies that the onus to the appellant could not be shifted, which was the requirement, if the AO was unsatisfied with the creditworthiness of such persons. Further, in response to the Ld. AO's note sheet entry dated 11.03.2013, as to why the advances may not be added to the income, the appellant, vide letter dated 22.03.2013, while furnishing detailed explanation, also furnished affidavits confirming source of income, address and the income from other 121 depositors, out of 130 depositors, from whom the appellant had received deposit through cash in excess of Rs.50,000 during the current year. In addition, the appellant had also furnished their proof of residence in the form of Voter ID card, PAN, wherever applicable, receipt against the deposits received by the appellant and the Agreement/bonds executed by the appellant company. In respect of the remaining 9 depositors, similar evidences were furnished during the appellate proceedings. In view of this, evidently, the enquiry conducted by the Ld. AO in respect of the 50 depositors and further information

collected in respect of top 130 depositors shows that these depositors had confirmed to have made deposits with the appellant company for allotment of land/house. No adverse observation in respect of the same was made by the Ld. AO except that he was not satisfied as to why such amounts were received in cash and he was not satisfied about their creditworthiness. No enquiry in respect of the balance depositors was carried out by the Ld. AO.

6.6 In order to confirm the claim of the appellant about the Accounting Policy followed by it, I had asked the appellant to furnish the details of deposits where land was eventually transferred in the name of the depositors on completion of registration. I find that during the A.Y.2011-12, 8 plots were registered and the deposits received against the same were recognised as revenue in that year. Further, in A.Y.2012-13, 11 plots were transferred on registration and their revenue was recognised accordingly, in that year.

6.7 In view of the above facts, I find that since the AO himself verified the appellant's business of real estate development and has verified the bonafide of the deposits in respect of 50 cases, chosen on random basis, no adverse view can be taken only of the fact that majority of these deposits were taken in cash. On careful examination of the affidavits, I find that these depositors are merely farmers/cultivators with limited source of income. The housing project and the land project, both are for lower economic strata, that is why small amounts of deposits below Rs.20,000 were made by majority of the depositors (1142 in number) out of 1795 depositors. Total 1665 depositors had contributed below Rs.50,000 (out of total 1795 depositors). In respect of the other 130 depositors, who had contributed more than Rs.50,000 during the year, the appellant had furnished confirmation with necessary evidences. In support of this, since the bulk of the depositors are lowly paid agriculturists, no more conclusive evidence can be expected from them. Moreover, the Ld. AO has also not been able to gather any adverse evidence in the matter.

Therefore, keeping in view the above facts, taking into account the totality of the facts, I find no reason to hold such deposits as unexplained.

6.8 The AO has however, observed that the appellant recognised these deposits as its revenue in subsequent year in accordance with AS 7 and AS 9. In respect of the above facts, the AO has to keenly monitor the

F.Y. in which the appellant had cumulatively incurred 25% of the direct project cost and on ascertaining the same, should charge to revenue, the entire amount of deposits received till that point of time for taxation, as per AS 7.

6.9 In view of this, the addition made in this regard under Section 68 is not sustainable as based on the enquiry conducted by the AO and the information furnished by the appellant in respect of 130 depositors, no adverse view can be drawn of receipt of cash deposits of small amounts, which is common in the business model of low cost real estate development, in the absence of any specific finding that such depositors or deposit from them are bogus in any manner. Moreover, the AO has held the cheque component of such deposits as explained. The appellant has discharged onus in respect of top 130 depositors by furnishing evidences in support of identity, genuineness and creditworthiness. Further, AO himself has carried out inquiry in respect of 50 other depositors and the contention of the confirmation letter furnished by these depositors were not rebutted by the AO, by finding fault on cogent grounds, on an independent inquiry. Thus, when the appellant furnished confirmation along with supporting documents, the onus was shifted to the AO. Moreover, the AO has not gathered any further evidences to substantiate the allegation that their creditworthiness was doubtful nor has spelt out the manner in this regard. In view of this, the finding of the AO that creditworthiness of all depositors (in respect of cash component alone) was doubtful, while admitting the creditworthiness in respect of cheque component, is without any support of evidences, baseless and without discharging onus in this regard. In view of this, I find no merit in the action of the AO of treating cash component of deposits as unexplained u/s 68, while holding cheque component of such deposits as explained. Accordingly, the addition made u/s 68 is deleted.

7. Statistically, the appeal stands allowed.”

4. We have also perused the order passed by the Co-ordinate Bench in assessee's own case, the relevant observation whereof is as follows:

“8. At the very outset of the opening of the hearing, the ld. counsel for the assessee submitted that this is a case where the Economic Offence Wing [EOW] and the Central Bureau of Investigation

[CBI] were investigating the funds received from various persons.

9. *The ld. counsel for the assessee furnished a copy of the letter of Additional Secretary to Government of Odisha to Competent Authority, Cuttack requesting for initiation of action of refund of deposit to the identified small depositors to support his argument that the depositors were identified and action is being taken to refund the amount taken from them and, therefore, addition made on that count u/s 68 of the Act by the Assessing Officer cannot be sustained.*
10. *The ld. counsel for the assessee placed reliance on the decision of the Hon'ble High Court of Orissa at Cuttack in WP(C) No. 14492 of 2021 order dated 01.09.2023 in the case of GLP Developers Ltd IA No. 13957 of 2023. The ld. counsel for the assessee drew our attention to Para 6 of the said order where the Hon'ble High Court is giving direction for identifying the investors and to make payments accordingly to the investors/depositors.*
11. *The Ld. counsel for the assessee fairly submitted that as these documents and fate of the investigation being made by EOW and the CBI was not before the Assessing Officer, the issue may be restored to the file of the Assessing Officer for proper examination and determination.*
12. *Per contra, the ld. DR fairly conceded that the issue may be restored to the file of the Assessing Officer for fresh adjudication.*
13. *We have given thoughtful consideration to the rival submission and to the orders of the authorities below. We find that this is the second round of litigation before the ITAT. In the second round, as in the first round, the AO disbelieved the claim of assessee that the advances were received from various persons and held that the assessee has not proved the identity of the persons and genuineness of the transaction. The Assessing Officer this time has, however, has mentioned about the CBI and EOW inquiry to support his action of making addition u/s 68. The CIT(A), as in*

the first round, upheld the findings of the Assessing Officer in this round too.

14. *Before us, the assessee has placed the documents of the Government of Odisha referring to the status report on the issue of identifying the depositors in the schemes of Golden Land Developers Ltd and GLP Developers Ltd and of refund of the deposits to them. The assessee has also placed before us the order of Orissa High Court taking cognizance of the issue of identification and return of deposits in the case of GLP Developers Ltd and Another. In view of the Orissa High Court cognizance of the matter and the Government of Odisha correspondence, we are of the considered opinion, that the details of depositors need further examination and verification in the context of the provision of section 68 of the IT Act. We, accordingly, restore this issue to the file of the Assessing Officer. The Assessing Officer is directed to examine and verify details of the depositors and decide the issue afresh after giving reasonable opportunity of being heard to the assessee. The assessee is also directed to furnish evidences/documents as required by the Assessing officer.*
15. *In the result, both the appeals of the assessee in ITA Nos. 2106 and 2107/DEL/2022 are allowed statistical purposes.”*

5. Having heard the Learned Counsel appearing for the parties and having regard to the facts and circumstances of the case, we find that order passed by the Co-ordinate Bench has dealt with the identical issue and respectfully relying upon the same, we, therefore, set aside the issue of the file of the Learned AO to examine and verify the genuineness of the transaction in regard to the cash advances made by the customers, upon granting an opportunity of being heard to the assessee and upon considering the evidence on record or any other evidence which the

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assessee may choose to file at the time of hearing of the matter and to pass a reasoned order strictly in accordance with law.

6. In the result, the appeal filed by the Revenue is dismissed.

This Order pronounced in Open Court on 08/07/2024

Sd/-
(G. S. PANNU)
VICE PRESIDENT

Sd/-
(Ms. MADHUMITA ROY)
JUDICIAL MEMBER

Dated 08/07/2024

*Priti Yadav, Sr.PS**

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI