

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH: 'F': NEW DELHI)**

**BEFORE SHRI S RIFAUZ RAHMAN, ACCOUNTANT MEMBER
AND
SHRI SUDHIR PAREEK, JUDICIAL MEMBER**

**ITA No:- 1367/Del/2023
(Assessment Year- 2010-11)**

M/s First Choice Propbuild Pvt. Ltd., 3543, Gali Jatwara, Daryaganj, Delhi.	Vs.	Assistant Commissioner of Income Tax, CC-13, E-2, ARA Centre, Jhandewalan Ext., New Delhi.
PAN No: AABCF0130A		
APPELLANT		RESPONDENT

Assessee by : None
Revenue by : Ms. Nimisha Singh, CIT (DR)

Date of Hearing : 21.05.2024
Date of Pronouncement : 20.08.2024

ORDER

PER SUDHIR PAREEK, JM:

This appeal is preferred by the Assessee against the order dated 25.08.2022 passed by the Learned Commissioner of Income Tax (Appeal)-28, New Delhi, (hereinafter referred to as 'Ld. CIT (A)') for the Assessment Year ('AY') 2010-11, on the following grounds:

“1. The Ld. CIT(A) has erred in not appreciating the fact that there is lack of approval in the instant case u/s 153D of the Act and therefore, order of assessment is nullity

2. The Ld. CIT(A) has erred in not appreciating the fact that in any case, purported approval under section 153D of the Act have been granted without application of mind and is invalid, bad in law and is liable to be quashed. Consequently, assessment orders are vitiated for want of valid approval under section 153D of the Act.

3. The Ld. CIT(A) has erred in not appreciating the fact that the assessment records, seized material and appraisal report must be available before approving authority and approval must reflect the application of mind to the facts of the case and in absence thereof approval granted u/s 153D is not in accordance with law.

4. The Ld. CIT(A) has erred in not appreciating the fact that the approval was granted in short time on the date the request was made for approval by the AO.

5. The Ld. CIT(A) has erred in not appreciating the fact that the common approval is invalid.(Rs. 2,81,011/-)

6. The Ld. CIT(A) has erred in not appreciating the fact that the validity of assumption of jurisdiction to frame an order of assessment dated 24.12.2018 u/s 153C of the Act

7. The Ld. CIT(A) has erred in not appreciating the fact that addition/disallowance the made are not based on incriminating material detected as a result of search on the searched person and therefore addition made/disallowance is apparently the notice issued u/s 153C of the Act and, the order of assessment so framed are without jurisdiction.

8. The Ld. CIT(A) has erred in not appreciating the fact that the approach adopted by revenue is inconsistent contradictory and, contradictory.

9. The Ld. CIT(A) has erred in not appreciating the fact that the addition tantamounts to double taxation and is therefore, not permissible.

10. The Ld. CIT(A) has erred in not appreciating the fact that the disallowance of expenditure is factually and legally misconceived.

11. The Ld. CIT(A) has erred in not appreciating the fact that the lack of enquiry by the learned assessing officer.

12. The Ld. CIT(A) has erred in not appreciating the fact that no addition can be made on the basis of surmises, suspicion and conjectures

13. The Ld. CIT(A) has erred in not appreciating the fact that any document found from third party premises in absence of any corroborative evidence cannot be relied upon to draw any adverse inference against the appellant.

14. *The Ld. CIT(A) has erred in not appreciating the fact that the computation made is otherwise too arbitrary and wholly untenable.*

15. *The Ld. CIT(A) has erred in not appreciating the fact that the addition cannot be made merely on the basis of statement of third party recorded behind the back of without providing an opportunity to cross examine such witness, is contrary to the principles of natural justice and any inference drawn on basis of such statements be held unsustainable under law.*

16. *The Ld. CIT(A) has erred in not appreciating the fact that the percentage of commission adopted either @ 2.5% or increase on assets and liabilities and 1.5% as revenue items/bank deposits /withdrawals is without any basis and thus untenable.*

17. *The Ld. CIT(A) has erred in not appreciating the fact that the addition made on substantive basis in the hands of Mukesh Kumar @ 20% and protective basis in the hands of appellant company @ 80% is also based on no material and grossly untenable.*

18. *The appellant crave leave to add, alter or amend any of the grounds before or at the time of hearing.”*

2. As the case called up on 21.05.2024 for hearing, none appeared on behalf of the assessee and nor any adjournment was sought. From a bare perusal of the record, it is revealed that for a long period, nobody appeared on behalf of the assessee for the scheduled hearings on the following dates: 26.09.2023, 13.12.2023 and 05.03.2024.

3. We have heard the Ld. CIT(DR) and perused the material available on record. Due to consistent non-prosecution from the assessee's side, we have no option except to dispose off the appeal.

4. From the perusal of record, we noticed that present appeal is filed after the prescribed time limit for this purpose, for which appellant filed application for condonation of delay of 156 days, looking the nature of case, mentioned reasons in application and in the interest of justice, we find it appropriate to condone the delay and decide the appeal on its merit alone.

5. During the hearing, Ld. CIT(DR) relied upon the order passed by the Ld. CIT(A).

6. In the grounds of appeal, the assessee challenged the assessment order as it vitiates for want of valid approval u/s 153D of the Income Tax Act, 1961 ('the Act') and as per submission in the grounds of appeal, the assessment records, seized material and appraisal report must be available before approving authority and approval must reflect the application of mind. We perused the order passed by the Ld. CIT(A) and find that the Ld. CIT(A), while deciding the issue has gone into submission advanced by the assessee, material placed on record and judicial pronouncements on the issue and dismissed the appeal filed by the assessee. Neither the assessee nor his representative appeared to produce any

material to contradict the finding of the lower authorities. The Ld. CIT(A) has thoroughly and deeply examined the matter, on all issues and detailed and well-reasoned order passed, so there is hardly any basis exist for interference and impugned order deserves to be confirmed accordingly, and we do so.

7. Consequently, this appeal is dismissed as indicated above.

Order pronounced in the Open Court on 20.08.2024

Sd/-
(S RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Sd/-
(SUDHIR PAREEK)
JUDICIAL MEMBER

Dated: 20/08/2024.

Pooja/-

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	29.07.2024
Date on which the typed draft is placed before the dictating Member	02/08/2024
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	