

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "D" MUMBAI**

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)  
AND  
SHRI SUNIL KUMAR SINGH (JUDICIAL MEMBER)**

**ITA No. 408/MUM/2024  
Assessment Year: 2014-15**

D G Land Developers Pvt. Ltd.,  
104/105 Raghunath Kripa Building,  
Aarey Road, Goregaon East,  
Mumbai-400063.

**PAN NO. AAECD 4091 M  
Appellant**

**Vs.**

ACIT, Central Circle-4(4),  
Room No. 1922, 19<sup>th</sup> floor,  
Air India Building,  
Nariman Point,  
Mumbai-400021.

**Respondent**

**ITA No. 405/MUM/2024  
Assessment Year: 2015-16**

D G Land Developers Pvt. Ltd.,  
104/105 Raghunath Kripa Building,  
Aarey Road, Goregaon East,  
Mumbai-400063.

**PAN NO. AAECD 4091 M  
Appellant**

**Vs.**

Dy. CIT-12(2)(1), Now Dy.  
CIT Central Circle-4(4),  
Room No. 1922, 19<sup>th</sup> floor,  
Air India Building,  
Nariman Point,  
Mumbai-400021.

**Respondent**

Assessee by : Mr. Sanjeev Mehta a/w Saurabh  
Parasrampuria

Revenue by : Mr. Manish Sareen, CIT-DR

Date of Hearing : 31/07/2024  
Date of pronouncement : 22/08/2024



## **ORDER**

### **PER OM PRAKASH KANT, AM**

These two appeals by the assessee are directed against a common order dated 30.11.2023 passed by the Ld. Commissioner of Income-tax (Appeals) – 52, Mumbai [in short ‘the Ld. CIT(A)’] for assessment year 2014-15 and 2015-16 respectively. Being common issue in dispute involved in both these appeals, same were heard together and disposed off by way of this consolidated order for convenience and avoid repetition of facts.

2. The grounds raised in assessment year 2014-15 are reproduced as under:

1. *The notice issued u/s 153C of the Act dated 16.07.2018 is bad in law and the Ld. AO has erred in assuming jurisdiction u/s 153C of the Act as the mandatory condition to invoke the jurisdiction under Sec. 153C of the Act did not exist and consequently the assessment is liable to be set aside.*
2. *The order u/s 143(3) r.w.s. 153C of the Act dated 30.12.2018 is bad in law and liable to be set aside.*
3. *The Ld. CIT(A) erred in confirming the action of the Ld. AO in adding a sum of Rs. 3,86,61,523/- as business income. The Ld. CIT(A) erred in upholding the action of Ld. AO erred in making the impugned addition of Rs.3,86,61,523/- as the entire assessment is made on the basis of documents*
4. *found at the time of survey u/s. 133A and not on the basis of documents found and seized in the course of search u/s. 132 of the Act. The use of documents collected during survey u/s. 133A for the assessment u/s. 153C is not permissible under law*
5. *The Ld. CIT(A) erred in upholding the action of Ld. AO in Rs. estimating the on-money received for the year under reference using extrapolation technique.*



6. *The Ld. CIT(A) erred in upholding the action of Ld. AO in assuming the profit element in the on-money received for new construction at 36% instead the reasonable profit that is earned in appellants line of business being in the range of 10% to 12%. Similarly, the learned A.O. erred in assuming profit element at 16% for redevelopment projects instead at 8% to 10% being the reasonable profit.*
7. *Without prejudice to above, the learned A.O, erred in Rs. taxing the profit element of the gross receipts in the year under reference for projects where no sales are booked during the year since no income was accrued following percentage completion method.*
8. *The Ld. AO has erred in initiating penalty proceedings u/s 274 r.w.s 271(1)(c) of the Act vide letter dated 30.12.2018. The Appellant prays that the penalty proceedings us 274 r.us 271(1)(c) of the Act be dropped.*
9. *The Ld. CIT (A) has erred upholding the action of AO in Rs. levying interest u/s 234B of the Act*
10. *The Appellant craves leave to add, to amend, alter/delete and/or modify the above grounds of appeal on or before the final hearing.*

3. Briefly stated, facts of the case are that the assessee filed return of income for assessment year under consideration on 29.12.2016 declaring total income at Rs.89,61,000/-. The case was selected for scrutiny assessment and statutory notices under the Income-tax Act, 1961 (in short 'the Act') were issued and complied with. In the assessment order passed u/s 143(3) of the Act on 29.12.2016, the Assessing Officer made two additions, **firstly**, administrative, interest and depreciation expenses held as capital in nature amounting to Rs.1,77,70,261/- and **secondly**, addition invoking section 43CA of the Act for sales of flats below the stamp duty value amounting to Rs.23,02,264/-. In this manner after making these two additions, the Assessing Officer assessed total income at Rs.2,90,33,522/-.



4. On further appeal, the Ld. CIT(A) issued various notices however same were not complied by the assessee and therefore, the Ld. CIT(A) sustained both the disallowance/additions observing as under:

*“6. I have considered the facts of the case. Ground No. 1 relates to expenses of Rs. 1,21,08,537/- (Sheetal Deep), Rs.38,40,784 (Sheetal Shakuntala), Rs.6,26,500/-(Walawalkar), Rs. 10,44,440/- (Sweet Seven) and Rs.1,50,000 (Malvani) totalling to Rs. 1,77,70,261/- which according to the AO are capital in nature. Even though sales were recorded as NIL, the appellant claimed the expenses under the head of Administration, Interest and Depreciation as revenue expenses for the year under consideration. The assessee has overlooked the matching concept of revenue and expense. The appellant also did not furnish any reply to the notices issued before me. The appellant has not furnished any particulars including return of income, Tax Audit Report, submissions made before the AO, etc., despite specifically being called for. In my view, the AO's action cannot be stated to be arbitrary or unreasonable. This addition stands CONFIRMED. Ground No.1 stands DISMISSED.*

*7. Ground No. 2 relates to difference in the stamp duty value and sale price. Since the appellant could not furnish any explanation, he brought the same to tax u/s. 43CA of the Act. No evidences have been produced before me also. Onus lies solely on the appellant to explain such additions. One of the contentions of the appellant is that adequate opportunity was not given to explain the market value of the property. A perusal of the assessment order shows that several opportunities have been given u/s 142(1) of the Act. Hence, this contention is unable to be accepted. Another contention of the appellant is that AO ought to have made reference to the Valuation Officer. The appellant has not brought out any evidence to show that such a request was made before the AO. Had it been so, this office could have remanded the matter to the AO during the course of appellate proceedings. But the appellant, for reasons best known to it, has chosen to remain silent. Under these circumstances, the AO's action cannot be stated to be arbitrary or unreasonable. The addition stands CONFIRMED. Ground No. 2 stands DISMISSED.”*



5. We have heard rival submission of the parties and perused relevant material on record. As far as the grounds relating to disallowance of administrative, interest and depreciation expenses aggregating to Rs.1,77,79,686/- is concerned, we find that assessee was following percentage completion method of accounting and therefore, the assessee did not recognize any profit from the projects namely 'Sheetal Height'; 'Sheetal Jyot'; 'Sheetal Deep'; 'Sheetal Shakuntala'; 'Walwalkar'; 'Sweet Seven and 'Malwani', but claimed the expenses incurred on administration, employee cost etc under the head 'revenue expenditure'. The assessee contented that it was following the guidance note issued by the Chartered Accountant of India, 2012 and submitted that indirect expenses on project which were not directly attributable to the project were considered revenue expenditure. However, the Assessing Officer was of the view that following the matching concept of the revenue and expenses, the assessee should have capitalize the said indirect expenses, because no revenue income was shown from those projects. The Ld. CIT(A) also upheld the same view.

5.1 However, we are of the opinion that under the percentage completion method, the expenses which are directly related to the project can only be claimed against the revenue recognized from those projects and the expenses which are required for maintenance of company structure for day-to-day running, are to



be allowed as revenue expenditure. As far as grounds related to section 43CA of the Act is concerned, the assessee contented that no opportunity was given by the Assessing Officer for explaining the market value of the property and the AO should have referred the matter to the Valuation Officer. Before the Ld. CIT(A) no compliance was made and therefore, the Ld. CIT(A) has sustained the addition. In our opinion, as far as section 43CA of the Act is concerned if assessee has sold his stock-in-trade below the stamp duty value then it is required to add difference as profit and gains of the business, but in case any agreement exists for sale of the property prior to the registered sale agreement, then the stamp duty valuation as on that date should be considered. Since, in the case, the stamp duty value as on the date of the agreement has not been considered by the Assessing Officer, therefore, the issue needs to be re-examined.

5.1 Though, the assessee has not complied before the Ld. CIT(A), but, the assessee did not avail opportunity before the Assessing Officer also, therefore, we feel it appropriate to restore, both the matter of indirect expenses and 43CA of the Act involved in the appeal, back to the file of the Assessing Officer for deciding afresh. The grounds raised by the assessee in assessment year 2014-15 are allowed for statistical purposes.



5.2 In assessment year 2015-16, only one addition in relation to section 43CA of the Act addition is contested, therefore, following our finding in assessment year 2014-15, said ground decided *mutasis mutandis* and allowed for statistical purpose.

6. In the result, both the appeals are allowed for statistical purposes.

**Order pronounced in the open Court on 22/08/2024.**

**Sd/-  
(SUNIL KUMAR SINGH)  
JUDICIAL MEMBER**

**Sd/-  
(OM PRAKASH KANT)  
ACCOUNTANT MEMBER**

Mumbai;  
Dated: 22/08/2024  
Rahul Sharma, Sr. P.S.

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,  
(Assistant Registrar)  
**ITAT, Mumbai**