

**IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN**

Before Shri Waseem Ahmed, Accountant Member and
Shri Soundararajan K., Judicial Member

ITA Nos. 163& 164/Coch/2024
(Assessment Year: 2015-16)

Townhomes Villas and Apartments Pvt Ltd. Reji Nivas, Athani Nedumbassery Ernakulam 683585 [PAN: AAFCT2252D]	vs.	The Income Tax Officer Kochi
(Appellant)		(Respondent)

Appellant by:	Shri Mathew Joseph, CA
Respondent by:	Shri Sanjit Kumar Das, CIT-DR

Date of Hearing:	01.10.2024
Date of Pronouncement:	21.10.2024

ORDER

Per Bench

These appeals filed by the assessee are directed against the order of the National Faceless Appeal Centre, Delhi [CIT(A)] dated 16.01.2024 & 16.01.2024 for Assessment Year (AY) 2015-16.

2. At the outset, we note that the assessee has filed additional documents during the appellate proceedings which were not admitted by the learned CIT(A) as there was no application filed by the assessee under rule 46A of the Income Tax Rules, 1962.

3. At the time of hearing, the learned counsel for the assessee before us submitted that the AO has made an addition for Rs.3,49,00,000/- under the provisions of section 69B of the Income Tax Act, 1961 (the Act) on the

reasoning that the assessee was liable for making payment of Rs.6,65,00,000/- as per the agreement whereas the assessee has paid only Rs.3,16,00,000/- only. Accordingly, the AO was of the view that there is unaccounted payment made by the assessee for Rs. 3,49,00,000/- only. As per the learned A.R. the difference as observed by the AO was paid in the subsequent year after passing the assessment order. Therefore, the allegation as raised by the AO is not sustainable which was justified based on the additional evidence filed before the Id. CIT-A. However, the learned CIT(A) did not admit the same. The learned A.R. accordingly prayed before us to restore the issue to the file of the AO for verification as per the provisions of law.

4. The learned CIT-DR did not raise any objection if the matter is set aside to the file of the AO for fresh adjudication as per the provisions of law.

5. We have heard the rival contentions of both the parties and perused the materials available on record. Considering the fact that the amount involved in the dispute has been paid by the assessee in the subsequent year which is evident from the additional document filed by the assessee before the learned CIT(A). Indeed, such additional document is crucial for deciding the issue on hand. Otherwise, the addition made by the AO will be sustained without considering the additional documents filed by the assessee. In our considered view, a meritorious case should not be dismissed due to technical lapses. Therefore, in the interest of justice and fair play we are inclined to give one more opportunity to the assessee to represent its case before the AO. Accordingly, we set aside the findings of the learned CIT(A) and restore the issue to the file of the AO for fresh verification and adjudication as per the provisions of law. Hence the ground of appeal of the assessee is hereby allowed for statistical purposes.

6. The appeal in ITA No. 164/Coch/2024 relates to the penalty imposed by the AO u/s 271(1)(c) of the Act, which is consequential. Since, we have restored the quantum of appeal to the file of the AO for fresh adjudication, this appeal is also restored back to the AO for fresh consideration.

7. In the result, both the appeals filed by the assessee are allowed for statistical purposes.

Order pronounced on 21st October, 2024 under Rule 34 of The Income Tax (Appellate Tribunal) Rules, 1963.

Sd/-
(Soundararajan K.)
JudicialMember

Sd/-
(Waseem Ahmed)
AccountantMember

Cochin, Dated: 21st October, 2024

n.p.

Copy to:

1. The Appellant
2. The Respondent
3. The Pr. CIT concerned
4. The Sr. DR, ITAT, Cochin
5. Guard File

By Order

Assistant Registrar
ITAT, Cochin