

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

**BEFORE SH. SHAMIM YAHYA, ACCOUNTANT MEMBER
AND
SH. SUDHIR KUMAR, JUDICIAL MEMBER**

ITA No.3178/Del/2023
Assessment Year: 2011-12

Deputy Commissioner of Income Tax	of	VS.	Afresh Builders Pvt. Ltd. GF-1, Vipul Plaza, Haiderpur Viren, Sector-54, Gurgaon Haryana – 122001 PAN No.AAGCA9693L
(APPELLANT)			(RESPONDENT)

Appellants by	Mr. Javed Akhtar, CIT(DR)
Respondent by	Sh. Lalit Mohan, CA

Date of hearing:	08/10/2024
Date of Pronouncement:	06/11/2024

ORDER

PER SUDHIR KUMAR, JM:

This appeal by the revenue is directed against the order of Commissioner of Income Tax (Appeals)-3, Gurgaon [hereinafter referred to as "CIT(A)"], vide order dated 29.08.2023 pertaining to A.Y. 2011-12 and arises out of the assessment order dated 09.07.2019 passed by the Assessing Officer under Section

153A(1)(b) of the Income Tax Act, 1961 [hereinafter referred as 'the Act'].

2. The assessee has raised the following grounds of appeal :-

1. *Whether the Development Rights Agreement seized as per Annexure A-4 does not amount to be incriminating material in view of facts had there been no search conducted, aforesaid information could not be passed on to the Department?*

2 *Whether the Ld. CIT (A) is right in deleting the addition of Rs.13,56,544/-made on account of differential value of TDR as per books and as per report of DVO by holding that no incriminating material was found and seized during the course of search operation whereas in the instant case the said addition is based upon incriminating material found and seized during the search operation on the M3M group of cases?*

3 *Whether the Ld. CIT (A) is right in deleting the addition of Rs. 2,05,92,000/- made u/s 40a(ia) of the Act by holding that the said disallowance was not emanating out of any incriminating material whereas as per para 14(iii) of order of Hon'ble Supreme Court in the case of PCIT, Central-3 vs Abhisar Buildwell P. Ltd, AO would assume the jurisdiction to assess or reassess the 'total income' taking into consideration the incriminating material unearthed*

during the search as well as other material available with the AO?

4 The appellant craves to add, amend, alter or modify any grounds of appeal at the time of hearing.

3. The brief facts of the case are that a search and seizure operation u/s 132 of the Act was conducted on 21-07-2016 at the residential as well as office premise of M3M group of cases. A notice u/s 153A was issued and served upon the assessee on 22-11-2018 requiring him to file his return of income in respect of assessment year 2011-12. In response of the notice the assessee has filed his return of income u/s 153C of the Act declaring its income at loss of Rs 633543/- on 29-11-2018. Notice u/s 143(2) and 142(1) along with questionnaire were issued to the assessee. During the course of the scrutiny assessment proceedings referring to the trial balance as the incriminating material found at the time of search the assessing officer raised specific query in relation to the under valuation of the transfer of development rights. After appreciating the submission of the assessee, the AO concluded that the difference between the DVO and as per the book of accounts of the assessee is the income of the assessee and made the addition of Rs 1356544/-. According to AO the assessee did not route the transaction through Profit and Loss account and the assessee has not deducted the TDS while making the payment

to HUDA and made the addition that the assessee has not deducted the TDS on EDC while making such payment of Rs 2,05,92000/- and made total addition of Rs 21335001/ for A.Y. 2011-12.

4. Aggrieved the order of the assessing officer the assessee has filed the appeal before the Ld CIT(A) who vide his order dated 29-08-2023 allowed the appeal. Aggrieved by the order of the Ld CIT(A) the revenue is in appeal before us.

5. The Ld. DR has submitted the during the search and seizure proceedings incriminating material was found on which basis the addition was made by the assessing officer. He has strongly supported the findings of the assessing officer.

6. The Ld AR of the assessee has submitted that the addition was made without incriminating material. He has further submitted no incriminating material was found during the search for the A.Y.2011-12. Reliance has been placed the judgment of the Hon'ble ITAT Delhi Bench in **ITA No 2677& 2678 /del/2023 DCIT vs Martial Buildcom P. Ltd.**

7. Ld CIT(A) drawing the support from the decision of the Hon'ble High Court in the case of Kabul Chawla 61 taxmann.com 412 and also from the decision of the Hon'ble

Supreme Court in the case of Abhisar Buildwell 454ITR 212 deleted the additions made by AO.

8. We have heard the rival arguments and perused the material available on record. In so far as the addition on account of transfer of development rights is concerned the conclusion of the assessing that “difference between the valuation of the property as per DVO and as per the books of account of the assessee is being added to the income of the assessee” is self explanatory in the sense while making the addition no reference is made to any incriminatory material. The AO has made the addition only on the basis of the difference between the valuation report and the value shown in the books of account. The assessing officer has made the addition on account of EDC which was paid to HUDA without deducted the TDS. This addition also has made on the examination of the entries in the books of account not on the basis of the incriminating material. The Ld CIT(A) has rightly held that the addition made by AO cannot be sustained in the absence of any incriminating material found and seized. The appeal has no merit and liable to be dismissed.

9. In the result, the appeal of the revenue is dismissed.

Order pronounced in the open court on 06.11.2024.

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

NEHA, Sr. PS

Date:- .11.2024

Copy forwarded to:

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

Sd/-
(SUDHIR KUMAR)
JUDICIAL MEMBER

ASSISTANT REGISTRAR
ITAT NEW DELHI