

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'A': NEW DELHI
BEFORE
SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

ITA No. 1548/Del/2020, A.Y.2007-08)

ITO C.R Building, IP Estate, New Delhi	Vs.	Best City Projects (India) Pvt. Ltd. Plot No. H-8, FF, Netaji Subahsh Place, Pitampura, New Delhi PAN : AACCB7635D
(Appellant)		(Respondent)

ITA No. 1549/Del/2020, A.Y.2007-08)

ITO Ward-6(4), C.R Building, New Delhi	Vs.	Best City Realtors India Pvt. Ltd. Plot No. H-8, FF, Netaji Subahsh Place, Pitampura, New Delhi PAN : AACCB7637B
(Appellant)		(Respondent)

Appellants by	Sh. Sidhant Arora, CA
Respondent by	Ms. Amisha S. Gupt, CIT-DR

Date of Hearing	24/10/2024
Date of Pronouncement	22/11/2024

ORDER

PER YOGESH KUMAR U.S., JM :

These two appeals are filed by the Department against the order of Ld. Commissioner of Income Tax (appeals)-2 New Delhi, ["Ld. CIT(A)" for short], dated 26/06/2020 for the Assessment Year 2007-08 pertaining to above-mentioned Assessees.

2. Since, identical grounds of Appeal have been raised by the Department, the Grounds of Appeal in ITA No. 1548/Del/2020 is reproduced as under: -

“1. On the facts & under the circumstances of the case, the Ld (ITA) has erred holding that the proceedings u/s 153C of the Income Tax Act could not be initiated in this case, although there was enough seized material as discussed in order of CIT(A) dated 11.03.2014 in first round.

2. On the facts & under the circumstances the case, the Ld. CIT(A) has erred in allowing the appeal of the assessee on the additions made u/s 68 & 69C of the Income Tax Act ignoring the fact that in Appellate Order dated 11.03.2014, the CIT(A) has very clearly held that enough evidences were found during search regarding share capital.

3. The appellant craves leave for reserving the right to amend, modify, alter, add or forego any ground(s) of appeal at any time before or during the hearing of this appeal.”

3. For the sake of convenience, the brief facts of the case in ITA No. 1548/Del/2020 has been considered for the sake of convenience. An assessment order u/s 153C of the Act was came to be passed by DCIT, Central Circle-II on 28/03/2013 by making addition on account of unexplained credit u/s 68 of the Act of Rs. 4,80,00,000/- and on account of unexplained expenditure of Rs. 10,80,000/-. The said assessment order has been challenged before the Ld. CIT(A) and the Ld. CIT(A) held that there is no legal backing for addition made u/s 68 & 69C of the Act however, on the merit upheld both the additions made u/s 68 & 69C of the Act.

4. The Ld. A.O. while giving effect to the order of the Ld. CIT(A), was of the opinion that the Ld. CIT(A) has held the additions made by in the Assessment Order and accordingly the A.O. passed the order which in his view was inconsonance with findings of the Ld. CIT(A). Subsequently, the Assessee filed an application u/s 154 of the Act to rectify the error apparent from the record which has been rejected by the A.O. Aggrieved by the order of rejecting the application u/s 154 of the Act, the Assessee filed an appeal before the Ld. CIT(A). The Ld. CIT(A) rejected the Appeal on the ground that the Appeal is not maintainable on the ground that the order giving effect does not fall in the category of order to be appealed against, as per Section 246 A(2) of the Act.

5. Aggrieved by the order of the Ld. CIT(A), the Assessee filed an appeal before the Tribunal. The Co-ordinate Bench of the Tribunal vide order dated 07/01/2019 while disposing the Appeal filed by the Assessee, restored the Appeal to the file of the Ld. CIT(A) to consider the Assessee's Appeal with a direction to adjudicate the appeal and pass the orders in accordance with law. The Ld. CIT(A) vide order dated 26/06/2020 while deciding the Appeal filed by the Assessee, directed the A.O. to re-compute and rework the appeal effect after taking into cognizance of the legal determination expounded by the Ld. CIT(A) in order dated 11/03/2014 and also by taking into account of the observation of the Tribunal. Similar order has also been come to be passed on 26/06/2020 in the case of Best City

Realtors (India) Pvt. Ltd., which are under challenge by the Department has on the grounds mentioned above.

6. The Ld. Departmental Representative by relying on the assessment order sought for sustaining the addition made by the A.O.

7. Per contra, the Ld. Counsel for the Assessee submitted that the Grounds of Appeal of the Revenue are on the merit of the case which is not the subject matter of the impugned orders of the Ld. CIT(A) and by justifying the order of the Ld. CIT(A), contended that the Ld. CIT(A) has committed no error in holding that 'since the Appeal of the Assessee has been allowed on technical grounds of Appeal by the Ld. CIT(A), the issue on merit becomes only academic in nature', therefore, sought for dismissal of the Appeal of the Revenue.

8. We have gone through the grounds of appeal of the Revenue, wherein the Department has challenged the order of the Ld. CIT(A) on the merit contending that the Ld. CIT(A) has erred in holding that the proceedings u/s 153C of the Act could not be initiated, although there was enough seized material which has been discussed in the order of the Ld. CIT(A) dated 11/03/2014 in the first round.

9. In the present case, an assessment order u/s 153C has been passed on 28/03/2013 by making additions u/s 68 & 69 of the Act. The said assessment order has been challenged by the Assessee before the Ld. CIT(A)

and the Ld. CIT(A) vide order dated 11/03/2014, deleted the addition based on the legal ground. However, the Ld. CIT (A) sustained the addition on its merits. The said order has not been challenged by the Department at any point of time. The Assessee preferred an application u/s 154 of the Act before the A.O. which has been dismissed on 27/04/2017 on the ground that relief in the Appeal granted by the Ld. CIT(A) cannot be taken into consideration as the Ld. CIT(A) order has been passed in favour of the Revenue. The Assessee filed an Appeal before the Tribunal challenging the order of the Ld. CIT (A) in ITA No. 7651-52/Del/2017. The Co-ordinate bench of the Tribunal remanded the matter to the file of the Ld. CIT (A) for adjudicating the Appeal afresh holding that the Appeal of the Assessee is maintainable. The Ld. CIT(A) vide order dated 26/06/2020, allowed the Appeal of the Assessee holding that once the Appeal was decided in favour of the Assessee on legal grounds, the adjudication on merits become academic.

10. In the present appeals, the Department has called into question of the order dated 26/06/2020 which came to be passed against the order passed u/s 154 of the Act dated 26/06/2020. As per the grounds of appeal the Department is challenging the order of the Ld. CIT (A) holding that proceedings u/s 153C of the Act could not be initiated in this case although there was enough seized material as discussed in the order of the Ld. CIT (A) dated 11/03/2014 and also contested the Appeal on the merits of

the addition. In our considered opinion, the Department can only question the legality or otherwise of the impugned order dated 26/06/2020 not beyond the same. Thus, the Grounds of Appeal of the Revenue are misconceived and we are with the agreement of the finding of Ld. CIT(A) that once the Appeal of the Assessee is allowed on legal grounds, the adjudication of the addition on merits become academic and once the assessment order itself has been quashed on legal ground, the addition made by the A.O. cannot be sustained. Finding no error or infirmity in the order of the Ld. CIT(A) and finding no merit in the Grounds of Appeal of the Revenue, we dismiss the Appeals in ITA No. 1458/Del/2020 and 1549/Del/2020 filed by the Department of Revenue.

Order pronounced in open Court on 22nd November, 2024

Sd/-

(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Dated: 22/11/2024

R.N, Sr. PS

Sd/-

(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI