

आयकर अपीलीय अधिकरण, कोलकाता पीठ “ए”, कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH: KOLKATA
श्री राजपाल यादव, उपाध्यक्ष एवं श्री राजेश कुमार, लेखा सदस्य के समक्ष
[Before Shri Rajpal Yadav, Vice-President & Shri Rajesh Kumar, Accountant Member]

I.T.A. No. 1449/Kol/2023
Assessment Year: 2013-14

DCIT, Central Circle-3(3), Kolkata	Vs.	Express Land and Housing Co. Pvt. Ltd. (PAN: AABCE 2482 J)
Appellant / (अपीलार्थी)		Respondent / (प्रत्यर्थी)

Date of Hearing / सुनवाई की तिथि	23.10.2024
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	25.11.2024
For the Appellant/ निर्धारिती की ओर से	Shri Manoj Kataruka, A.R
For the Respondent/ राजस्व की ओर से	Shri Pradip Kumar Biswas, Addl. CIT

ORDER / आदेश

Per Rajesh Kumar, AM:

This is the appeal preferred by the revenue against the order of the Ld. Commissioner of Income Tax (Appeals)-21, Kolkata (hereinafter referred to as the Ld. CIT(A)”) dated 16.10.2023 for AY 2013-14.

2. The only issue raised in various grounds of appeal is against the deletion of addition of Rs. 57,57,039/- on account of profits on road right and development and deletion of Rs. 1,67,53,500/- on account of profit on advance received for land.

3. Facts in brief are that the assessee filed return of income on 28.09.2013 declaring total income of Rs. 9,19,400/-. The case of the assessee was selected for scrutiny proceedings and statutory notices were duly issued and served on the assessee. The assessee engaged in the business of road rights development including purchase of land. The AO on the basis of details furnished by the assessee observed that the assessee has received money against the road right development of Rs. 2,06,20,900/- against which the amount spent towards Development of access roads was Rs. 1,48,63,861/- and reached a conclusion that the difference being profit on the said receipt and accordingly added the same to the income of the assessee. Similarly, the AO observed that the assessee has shown in the liability side of the balance sheet, advance received against the land amounting to Rs. 2,19,00,000/- which according to AO were not offered to the tax. The AO treated the same as sale of land in regard to which the assessee has not submitted any details of expenses. The AO calculated the profit by taking the same percentage of expenses as disclosed by the assessee in the books of account. The gross profit is applied on the amount of advances against the land @76.50% and accordingly a sum of Rs. 1,76,14,608/- was treated as income and added the same to the income of the assessee as profit on sale of land thereby assessing the total income at Rs. 2,34,29,980/- in the assessment framed u/s 143(3) of the Act dated 30.03.2016.

4. In the appellate proceedings, the Ld. CIT(A) allowed the appeal of the assessee by passing a very detailed and speaking order running from page nos. 15 to 24. While deleting the addition of Rs. 57,57,039/-, the Ld. CIT(A) recorded a finding that the AO has wrongly concluded that the percentage of completion method was applicable whereas only plots of land were being sold and revenue of which was being recognized on a year on year basis. As regards the road development rights and the process of receiving money against road rights over a number of years, the Ld. CIT(A) noted that during the year, there is a loss of Rs. 1,32,461/- against advances received on account of road right development as the expenses incurred were more than the receipt and accordingly deleted the addition. While deleting the second addition of Rs.1,67,53,500/-, the Ld CIT(A) observed and held as under:

“It is evident that during the AY 2015-16, an amount of Rs. 1,84,00,000/- from this advance against land was settled towards sale of land to M/s Wise Enclaves Pvt. Ltd. on 07.05.2014. The appellant has submitted the corresponding sale deed. This amount has nevertheless been offered to tax during the AY 2015-16. The other amounts have either been transferred to Road Rights A/c or has been refunded back to the concerned parties. So to sum up, note only has the entire amount of Rs. 2,19,00,000/- not been received during the relevant FY but also the amounts have been properly accounted for in the subsequent FYs. It has already been discussed in the earlier grounds that individual plots of land were being sold by the appellant company, the revenue of which was being recognized on a year on year basis. It has also been discussed earlier that the advance against road rights a/c has also been properly accounted for and has been settled during the AY 2023-24 wherein a loss of Rs. 1,32,461/- has been determined. Therefore, it is neither the case that the transactions have not been offered to tax and nor it is that percentage of completion method is applicable to this case. I therefore cannot sustain the addition made by the AO to the tune of Rs. 1,67,53,500/- in this regards and the same stands deleted.”

5. After hearing the rival contentions and perusing the material on record, we find that the AO has simply made the addition in respect of profit on road development rights without any basis on the ground that the assessee has received advance of Rs. 1,22,00,000/- whereas a cumulative advance of Rs. 2,06,20,900/- against this amount spent against the road right development during the year was Rs. 1,48,63,861/- which was carried over to the next year and the net deficit during the year was Rs. 26,63,861/- and the cumulative deficit / surplus carried to the balance sheet was Rs. 57,57,039/-. We note that the said road right development was completed in the financial year 2023-24 wherein a loss of Rs. 1,32,461/- has been determined. The Ld. CIT(A) recorded a finding that the percentage completion has wrongly been applied by the AO and further noted that it is not the case of the AO that money has not offered to tax for above reasons. Therefore, we are inclined to uphold the order of Ld. CIT(A) on this issue. As regards the second addition of profit on sale of land, we note that the Ld. CIT(A) has given a clear cut finding that profit on sale of land has been accounted for and offered to tax on year to year basis. Considering the factual findings given by the Ld CIT(A), the addition made by the AO cannot be sustained. Accordingly we are inclined to delete the addition of Rs. 1,67,53,500/-.

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

Order is pronounced in the open court on 25th November, 2024

Sd/-

Sd/-

(Rajpal Yadav /राजपाल यादव)

(Rajesh Kumar/राजेश कुमार)

Vice-President/उपाध्यक्ष

Accountant Member/लेखा सदस्य

Dated: 25th November, 2024

SM, Sr. PS

Copy of the order forwarded to:

1. Appellant- DCIT, Central Circle-3(3), Kolkata
2. Respondent – Express Land and Housing Co. Pvt. Ltd., 1/A, Vansittart Row, BBD Bag, Kolkata-700001.
3. Ld. CIT(A)- 21, Kolkata
4. Ld. PCIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata