

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

**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT
and
SHRI S.RIFAUR RAHMAN, ACCOUNTANT MEMBER**

**ITA No.725/DEL/2024
(Assessment Year: 2014-15)**

Aarone Developers Private Limited,
6th Floor, Select City Walk Mall,
A3, District Centre, Saket,
New Delhi – 110 017.

vs.

DCIT, Circle 1 (1),
New Delhi.

(PAN : AAACV0276C)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri R.S. Ahuja, Advocate
Shri Pushpdeep Singh
REVENUE BY : Shri Javed Akhtar, CIT DR

Date of Hearing : 18.12.2024
Date of Order : 27.12.2024

ORDER

PER S.RIFAUR RAHMAN,AM:

1. This appeal is filed by the assessee against the order of Id. Commissioner of Income-tax Appeals/National Faceless Appeal Centre (NFAC) [hereinafter referred to as 'Id. CIT (A)] dated 09.01.2024 for Assessment Year 2014-15.
2. Brief facts of the case are, assessee filed its return of income on 30.11.2014 declaring total income of Rs.7,77,85,440/- and book profit of Rs.7,72,47,609/-. The case was selected for scrutiny and the regular

assessment under section 143(1) of the Income-tax Act, 1961 (for short 'the Act') was passed with the assessed income of Rs.7,82,09,700/-. Based on the information received from Office of Directorate General of GST Intelligence, Delhi Zone that assessee has shown gross receipts in its ITR much less than the receipt declared by the DG GSTI, Delhi Zone Unit, it was observed that there was under declaration of gross receipts to the extent of Rs.36,62,41,517/-. The AO observed that DG GSTI, Delhi has conducted searches in the case of assessee and Aero Promoters Pvt. Ltd. on 23.05.2015 and detected the evasion of service tax.

3. The assessee is engaged in the business of construction and residential complexes at Delhi and development of plot at Indore. The AO observed that the payments were received mostly on cash for providing such services from the prospective buyers from the years 2011-12 to 2015-16. He further observed that assessee received Rs.531.34 crores for Delhi project and Rs.28.89 crores for Indore project. He further observed that these receipts were not found in the books of account. Further he observed that it was found that considerations were received in cash in most of the cases and not recorded in the statutory books of account. The AO tabled gross receipts reported in ITR and detected by DG GST as under :-

ASSESSMENT YEAR	Gross reported in ITR	Receipts detected by DGGST	Under report of receipts
2013-14	74,70,94,404	126,03,53,280	51,32,58,876
2014-15	77,23,55,386	113,85,96,093	36,62,41,517
2015-16	53,97,01,209	95,09,17,900	41,12,16,691

4. Based on the above observations, notice u/s 148 of the Act was issued and served on the assessee through email. In response, assessee had filed its return of income on 30.04.2024. Subsequently, notices u/s 143(2) and 142(1) were issued along with questionnaire to the assessee. In response, assessee uploaded its reply on 07.03.2022 along with details/documents as called for. In response, assessee also filed reconciliation statement of turnover filed before the AO and the same are also submitted before us at page 14 of the paper book filed through ITBA System. With the reconciliation, assessee also submitted that the office of DG GSTI, Delhi has computed the turnover based on the Service Tax Rules from the books of accounts maintained in the normal course of business as per generally accepted accounting principles, based on which the assessee has prepared financial statements and got them audited. Further it was submitted that the calculation of turnover as per Service Tax Act on the basis of total receipts recorded in the books of account and there is no new information was found or detected by the office of DG GSTI. It was submitted that the turnover declared by the assessee in return of income is actual income for the year under consideration. After considering the

submissions of the assessee, AO rejected the same with the observation that assessee has not submitted relevant copies of documentary evidences in support of their claim mentioned in the reconciliation statement. Accordingly, he rejected the reconciliation statement submitted by the assessee. Accordingly, he treated the additional receipt detection by DG GSTI, Delhi as business income for the current assessment year. The AO observed that proportion of sale attributed to the land owner for Rs.7,61,56,255/- and the balance under reported receipt of Rs.29,00,85,262/- i.e. Rs.36,62,41,517/- minus Rs.7,61,56,255/- is treated as business income for the current assessment year under consideration and he applied the profit @ 10% on the above under reported receipts to the extent of Rs.2,90,08,526/- and added to the income of the assessee.

5. Aggrieved with the above order, assessee preferred an appeal before the Id. CIT(A) and even before Id. CIT (A), assessee has submitted that all information relevant for the issue under consideration was submitted before the AO. However Id. CIT (A), after considering the assessee's submissions and findings in the assessment order, sustained the additions made by the AO.
6. Aggrieved, assessee is in appeal before us raising following grounds of appeal :-

“A) That the facts of the circumstances of the case the learned AO & the CIT (A) erred in:

1. *The CIT (A) and Learned assessing officer erred on the facts and in law in not accepting the reconciliation furnished by the appellant, during the course of without assigning any reason.*

2. *The CIT (A) erred in not recognising that Learned Assessing Officer erred on the facts and in law in making the trading addition of Rs.2.90.08.526/- (i.e. 10% of (Rs.36,62,41,517 7,61,56,255/-) on estimation basis without pin pointing any transactions not recorded in the books of account and rejecting the books of account maintained in the normal course of the business and had been audited both by the Statutory as well as Tax Auditors.*

3. *The CIT (A) erred in not recognising that Learned Assessing Officer erred on the facts and in law in making an adhoc addition on his whims, fancies, assumptions, presumptions without assigning any rhymes and reasons, without pointing out any error, flaw, mistake of anomaly either in the books of accounts maintained in the normal course of business or documents/ evidences/ information furnished during the course of assessment. No basis or reason for making 10% addition as a business income has been given in the calculation by the learned Assessing Officer.*

4. *The CIT (A) erred in not recognising that Learned Assessing Officer erred on the facts and in law in saying that appellant has not submitted the relevant copy of documentary evidences to substantiate the claim in the reconciliation statement whereas it is not correct; all the documentary evidences were placed before him during the course of assessment.*

5. *The CIT (A) erred in not recognising that Learned Assessing Officer erred on the facts and in law in treating the amount of addition as under reported receipts, whereas the office of the GSTI has computed the turnover from the same set of books of accounts and the same set of transactions which are appearing in those books of accounts, the variation is only due to different computation mechanism under both the laws.*

B) The order(s) passed by Learned Assessing Officer/CIT (A) is bad in law and against the principles of natural justice.”

7. At the time of hearing, ld. AR of the assessee submitted that the assessee company was incorporated on September 9, 1988, under the name of M/s Vidhi Constructions (P) Ltd. and later its name was changed to M/s Aarone Developers Pvt. Ltd. w.e.f. 22.09.2007 and the assessee has regularly been assessed to Income Tax since incorporation. He submitted that the assessment for the assessment year 2011-12, 2012-13, 2013-14, 2014-15, 2017-18 and 2018-19 was completed U/s 143(3) of the Act. He submitted that the company is engaged in the business of Construction & development of Properties by way of outright purchase or through Collaboration and during the year, the company was engaged in the construction and development of its projects at Delhi and Indore. He further submitted that the assessee filed its return of income, for the year under consideration, u/s 139 (1) of the Act on 30.11.2014 and the same was assessed u/s 143(3) of the Income Tax Act. Thereafter, the Assessing Officer received the information from the office of The Director General, GSTI, Delhi reporting therein the variation in turnover worked out as per Service Tax Laws vis-a-vis the same appearing in the audited financial statements consequent to that the assessment is reopened by issue of notice u/s 148 of the Act.

7.1 Ld. AR for the assessee further submitted that the Assessee filed its return of income in response to notice u/s 148 on 30.04.2021 vide acknowledgment no.346695231300421 and the only reason for reopening the case was information received by the assessing officer, from the office of The Director General, GSTI, Delhi i.e. variation of Rs.36,62,41,517/- in gross receipts/turnover reported by the assessee in its audited annual accounts with that of the gross receipts/Turnover computed by the office of The Director General, GSTI, Delhi. It is submitted that the turnover appearing in the books of accounts & audited set of annual accounts is computed by following the generally accepted accounting principles & accounting standards whereas the turnover computed by the office of The Director General, GSTI, Delhi, is by following point of taxation rules as per Service Tax laws. He submitted that the system of calculating the turnover under both the laws is materially different and cannot be matched with one or the other. It was submitted that the assessee filed reconciliation of turnover computed by the office of the GSTI and that of appearing in the audited set of accounts, during the course of assessment, and explained the variation in turnover computed under both the laws duly supported with necessary documents to substantiate the same. He submitted that the AO did not find any error, mistake or anomaly either in the reconciliation of turnover

computed under both the laws nor in any of the documents furnished before him, during the course of assessment but opted to make the addition on his whims, fancies, assumptions, presumptions without assigning any reasons simply saying that the reconciliation statement is not acceptable and is rejected.

- 7.2 Ld. AR further submitted that the variation in the turnover cannot be said as due to the transactions not recorded in the books of accounts of the assessee but is due to different computation mechanism under both the laws. Moreover, he submitted that the office of the GSTI has computed the turnover from the same set of books of accounts and the same set of transactions which were appearing in those books of accounts based on which the annual accounts have been drawn. He submitted that the information reported by the office of the DG GSTI, Delhi was very much there and no new facts have been found or detected by the office of the DG GSTI except adoption of computation mechanism as per Service Tax Rules.
- 7.3 He further submitted that the AO completed the assessment u/s 147 of the Act for the year under consideration on 30.03.2022, by making a trading addition of Rs.2,90,08,5261- [i.e. 10% of (Rs.36,62,41,517-7,61,56,255)] on estimation basis by partly accepting the reconciliation statement

submitted, without rejecting the books of accounts of the assessee as follows:

Returned Income	Rs.7,74,81,350/-
Add : Estimated Profit @ 10% on Rs.29,00,85,262/-	Rs.2,90,08,526/-
Assessed income	Rs.10,64,89,876/-

7.4 Further, It is submitted that the Assessee submitted a detailed reconciliation of the difference between the turnover as per Audited statements and turnover as per Service Tax, which is reproduced by the AO on Page 4 to 6 of Assessment order. Further he submitted that the AO has disputed only 3 figures, which are as follows:

- a. Expenses on which service tax is paid under reverse charge :
Rs.1,23,44,953/-

In this regard it is submitted that as per service tax, Notification No.30/2012 dated 20th June 2012, the service tax is also payable on certain specified expenses under reverse charge mechanism (ReM) therefore they also become part of the turnover. Whereas, for accounting purposes, the expenses debited in the books of accounts of the assessee are expenses only and they can never become a part of turnover as per GAAP. Detail of expenses of Rs.12,344,953/- where service tax was paid under reverse charge mechanism (RCM), as per the said notification is enclosed with copy of the service tax returns which were submitted during the

course of the assessment proceedings and before Ld. CIT(A) also.

In this regard, he referred Page no.89-117 of the paper book.

- b. Advance received against sale of property/plot/flats in excess of the revenue recognized as per POCM : Rs.28,70,66,225/-.

He submitted that in case of builders/ developers, under the generally accepted accounting principles (GAAP), the turnover is to be recognized by following the percentage of completion method (PC OM) as per the Guidance Note issued by the Institute of Chartered Accountants of India with regard to the Accounting Standard-7. The assessee has to follow it mandatorily while preparing the accounts as per Section 145(2) of the Income Tax Act.

He further submitted that as per this accounting standard, recognition of revenue and expenses is made by reference to the stage of completion of a contract. It was submitted that under this method, contract revenue is matched with the contract costs incurred in reaching the stage of completion, resulting in the reporting of revenue, expenses and profit which can be attributed to the proportion of work completed and under the percentage of completion method, revenue/sale is recognised in the statement of profit and loss in the accounting periods in which the work is

performed i.e., on the basis of percentage completion of the project. As per this method, revenue is recognized in proportion to percentage of completion of the project in case the following conditions are satisfied:

- a) All critical approvals and sanctions for construction has been obtained.
- b) When the stage of completion of the project reaches a reasonable level of development. A reasonable level of development is achieved if expenditure incurred on construction and development costs is not less than 25% of the total estimated construction and development costs.
- c) At least 25% of the saleable project area is secured by contracts or agreements with buyers.
- d) At least 10 % of the total revenue as per the agreements of sale or any other legally enforceable documents are realised at the reporting date in respect of each of the contracts.

Thus, he submitted that under percentage of completion method, no revenue is recognized (irrespective of the fact that advances from customers have been received) unless at least 25% of the construction has been completed, at least 25% of the area has been sold and at least 10% of the sale value has been received from the

customer. Whereas, in case of builders/ developers (treated as Service Provider), As per Service Tax Act, turnover is calculated as per rule 3 of . 'The Point of Taxation Rules 2011 which states that the point of taxation shall be,-

- a) The time when the invoice for the service provided or agreed to be provided is issued.
- b) in a case, where the person providing the service, receives a payment before the time specified in clause (a), the time, when he receives such payment, to the extent of such payment.

He submitted that as the assessee is a real estate developer, it sold the properties on the basis of agreement to sell/sale deed and no invoice is raised, thus as per the above rule, turnover under the Service Tax Act, in the case of the assessee company, is recognized as and when any advance is received. It was submitted that during the year under consideration, the assessee company received fresh advances against sale of property/plots/flats in excess of the revenue recognized as per POCM of Rs.28,70,66,225/-. The office of the Director General, GSTI, Delhi, on the basis of Point of Taxation Rule-3, has included the amount of said advances in the turnover of the assessee appearing in the profit & loss account and thus preponed the tax liability under Service Tax. Whereas the assessee company has recognized the turnover as per Accounting

Standard -7 following POCM method of recognizing revenue irrespective of date of receipt of advances. He submitted that detail containing the name, address, PAN and amount of fresh advances received, during the year, against the booking of the property/plots/flats from the parties was placed before the learned assessing officer and is submitted before AO and Id. CIT (A). In this regard, he referred to Page Nos. 15-21 for details of advance received, 68-81 for summary of PCOM Calculation and 22-67 for Agreements of the Paper book.

It was further submitted that for accounting and income tax purposes advance received against sale of plot/flat is always treated as liability. It becomes part of the turnover only after transfer of plot takes place as per provisions of section 2(47) of the Income Tax Act. In case of Real Estate Developers where the duration of the projects is long, AS-7 prescribed by the Institute of Chartered Accountants is applicable and said standard inter-alia provides that turnover should be recognized in proportion of the percentage of completion of project. Thus, turnover has to be recognized based on percentage of completion of the project irrespective of amount of advances received. Thus, receipt of advance against sale of plot/flat has no co-relation with recognition of turnover. Turnover

as per service tax include advances received, only due to specific provision contained in the Service Tax Act. But, this position cannot be generalized and override the Generally Accepted Accounting Principles or Income Tax Law.

7.5 Ld. AR further submitted that the assessee prepared and submitted the reconciliation statement, before the learned assessing officer, to arrive at the actual turnover as per the Generally Accepted Accounting Principles, from the turnover computed by the office of the Director General, GSTI, Delhi, during assessment proceedings and this reconciliation, cannot be ignored out rightly without assigning any reason. Therefore, he submitted that the Assessing Officer erred in treating the advances received in excess of revenue recognised of Rs.28,70,66,225/- and expenditure where service tax is paid under reverse charge mechanism of Rs.1,23,44,953/- totalling to Rs.29,00,85,262/- (28,70,66,225 + 12,344,953) as variation in turnover of the assessee company because of the following:

- The amounts of Rs.28,70,66,225/- are the fresh advances against sale of property/plots/flats in excess of the revenue recognized as per POCM. The assessee company has already recognised revenue as per the POCM on the fresh advances received against sale of property/plots/flats and therefore this cannot be treated as business income.
- The amount of Rs.1,23,44,953/- are the expenses debited on which service tax is paid under reverse charge mechanism as per the

Notification NO.30/2012 dated 20th June 2012 and these expenses debited in the profit and loss account cannot be treated as the business income.

- 7.6 It is submitted that the AO and ld. CIT (A), in their orders, have not disregarded the reconciliation submitted by the Assessee and they did not find any fault in it neither had they asked for any additional documents. He submitted that they have not even rejected the books of account of the assessee but have made/upheld the estimated addition of Rs.2,90,08,526, which is contrary to law laid by Hon'ble High Court of Delhi in the case of National Industrial Corporation Limited 258 ITR 578).
- 7.7 In view of his aforesaid submissions, ld. AR for the assessee submitted that the addition may be deleted and the appeal be allowed.
8. On the other hand, ld. DR for the Revenue submitted that no doubt, assessee has submitted reconciliation of turnover before the lower authorities. However, assessee has not submitted any supporting documents in support of reconciliation carried on by it. The Bench asked the ld. DR at the Bar to substantiate that the assessee has not submitted supporting documents relating to reconciliation which is contrary to the submissions made by the ld. AR that all supporting documents were already submitted before the lower authorities like details of fresh advances, copy of agreements and details of expenses on which reverse charge is applicable. In response, ld. DR for the Revenue, after verifying

the assessment records with the AO, submitted at the Bar that the assessee has filed the relevant documents before the lower authorities.

9. Considered the rival submissions and material placed on record. We observed that the AO has reopened the assessment based on the information received from DG GSTI, Delhi that gross turnover declared by the assessee in its return of income and the turnover declared for the purpose of service tax are different since there was under reporting of the gross turnover to the extent of Rs.36.62 crores. However, the assessee during assessment proceedings submitted the reconciliation statement between the turnover declared for the purpose of service tax and turnover declared in its return of income along with the supporting documents through ITP System. The AO grossly observed that the assessee has not submitted any supporting evidences relating to reconciliation of gross turnover. From the records submitted before us, the assessee has submitted all the relevant information through ITB Portal and for the sake of clarity, the same is reproduced below :-

S.No.	Particulars	Page No. of Paper Book	Filed before Ld. AO vide Acknowledgement Number	Filed before Ld. CIT (A) vide Acknowledgement Number
1	Reconciliation of Turnover	14	397960481210322 Dated 21.03.2022	544532241071223 Dated 07.12.2023
2	Detail of fresh advances	15-21	397960481210322 Dated 21.03.2022	544532241071223 Dated 07.12.2023
3	Copy of Agreements	22-67	267341951280222 Dated 28.03.2022 397960481210322 Dated 21.03.2022	544532241071223 Dated 07.12.2023

4	Summary of Revenue and PCOM Charts	68-81	267341951280222 Dated 28.03.2022	544532241071223 Dated 07.12.2023
5	Point of taxation rule 3 and notification	82-88		544532241071223 Dated 07.12.2023
6	Details of expenses on which reverse charge is applicable.	89-117	308396661080322 Dated 08.03.2022	544532241071223 Dated 07.12.2023
7	Assessment Order u/s 147 in matter of Aero Promoters Private Limited ASSESSMENT YEAR : 2015-16	118-124	468123231290322 Dated 29.03.2022	544532241071223 Dated 07.12.2023

10. Considering the facts on record, we observed that the turnover declared on the Service Tax Act which is based on receipt of advances not based on completion of project. The determination of gross revenue is different from the actual turnover. On the basis of reconciliation, there will be difference between turnover declared for the purpose of service tax and the return of income. From the records submitted before us shows that assessee has submitted relevant reconciliation statement before the lower authorities along with relevant documents. The lower authorities failed to consider the same. Therefore, we do not see any reason to sustain the additions made by the AO. Accordingly, the estimated profit on the undisclosed turnover is deleted.
11. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on this 27th day of December, 2024.

**Sd/-
(MAHAVIR SINGH)
VICE PRESIDENT**

**sd/-
(S.RIFAUR RAHMAN)
ACCOUNTANT MEMBER**

Dated: 27.12.2024/TS

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI